(1)

Supreme Court, U.S.
FILED

No. 01 475 SEP 17 2001

OFFICE OF THE CLERK

In The

Supreme Court of the United States

IRMA JEAN JAMES; TERRI LARY,

Petitioners,

v.

CITY OF DALLAS, TEXAS, ET AL.; CITY OF DALLAS, TEXAS; U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

MICHAEL M. DANIEL
Counsel of Record
LAURA B. BESHARA
Attorneys for Petitioners

MICHAEL M. DANIEL, P.C.
3301 Elm Street
Dallas, TX 75226-1637
214/939/9230 Phone
214/939/9229 Fax

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

156 pp

QUESTION PRESENTED

Did Petitioners' race discrimination class action claim alleging that: A) the City of Dallas was disproportionately demolishing repairable single-family houses in predominantly black neighborhoods, B) HUD had provided financial and other support for the demolitions, and C) the demolitions constituted purposeful racial discrimination by the City and HUD using racial neighborhood stereotypes directly traceable to overt racial classifications and other forms of racial discrimination, satisfy the redressability requirement for Article III standing?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 1

STATEMENT 1

REASONS FOR GRANTING THE PETITION 14

CONCLUSION 30

TABLE OF AUTHORITIES

Page

CASES

Adarand Constructors, Inc. v. Pena, 515 U.S. 200 (1995) 15, 17

Allen v. Wright, 468 U.S. 737 (1984) 18

Bennett v. Spear, 520 U.S. 154 (1997) 19, 25, 30

Bowen v. Massachusetts, 487 U.S. 879 (1988) 28

Davis v. United States Department of HUD, 627 F.2d 942 (9th Cir. 1980) 22, 23

Friends of the Earth v. Laidlaw, ___ U.S. ___, 145 L. Ed. 2d 610 (2000) 20, 25

Garrett v. City of Hamtramck, 503 F.2d 1236 (6th Cir. 1974) subsequent appeal and unpublished opinion 863 F.2d 48 (6th Cir. 1988) 23, 24

Gladstone Realtors v. Village of Bellwood, 441 U.S. 91 (1979) 29

Havens Realty Corp. v. Coleman, 455 U.S. 363 (1982) 29

Hills v. Gautreaux, 425 U.S. 284 (1976) 17

Hispanics United v. Village of Addison, 988 F. Supp. 1130 (N. D. Ill. 1997) 27

Jaffee v. United States, 592 F.2d 712 (3rd Cir. 1979) 28

Katz v. Cisneros, 16 F.3d 1204 (Fed. Cir. 1994) 28

Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992) 15, 20, 25

TABLE OF AUTHORITIES – Continued

Page

Munoz-Mendoza v. Pierce, 711 F.2d 421 (1st Cir. 1983) 16, 21, 22

Pederson v. Louisiana State University, 213 F.3d 858 (5th Cir. 2000) 29

Shaw v. Reno, 509 U.S. 630 (1993) 15

Sinkfield v. Kelley, 531 U.S. 28 (2000) 18

Texas v. Lesage, 528 U.S. 18 (1999) 15, 18

Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205 (1972) 29

United States v. Fordice, 505 U.S. 717 (1992) 17

Walker v. City of Mesquite, 169 F.3d 973 (5th Cir. 1999), *cert. denied*, 528 U.S. 1131 (2000) 18

Warth v. Seldin, 422 U.S. 490 (1975) 14, 29

Zellous v. Broadhead Associates, 906 F.2d 94 (3rd Cir. 1990) 28

CONSTITUTION

Fourth Amendment to the U.S. Constitution 6

Fifth Amendment to the U.S. Constitution 6

Fourteenth Amendment to the U.S. Constitution 6

STATUTES AND RULES

28 U.S.C. § 1254(1) 1

28 U.S.C. § 1292(b) 11

TABLE OF AUTHORITIES – Continued

Page

42 U.S.C. § 1981 6

42 U.S.C. § 2000(d) 6

42 U.S.C. § 3601 28

42 U.S.C. § 3604(a) 6, 28

42 U.S.C. § 3608(e)(5) 6, 28

42 U.S.C. § 3613 28

42 U.S.C. § 3613(a) 29

42 U.S.C. § 5301(b)(2) 6

42 U.S.C. § 5304(d)(2)(A)(i) 25, 26

42 U.S.C. § 5305(a)(24) 26

42 U.S.C. § 5308(a) 26

42 U.S.C. § 5309 6

42 U.S.C. § 12742(a)(1) 26

Fed. R. Civ. P. 23(b)(2) 3, 5, 11, 12

REGULATIONS

24 CFR § 42.375(a) 25

24 CFR § 92.205(a) 26

MISCELLANEOUS

Wright, Miller, Cooper, "Federal Practice and Procedure," Vol. 13 § 3531.6, page 464 (2001) 28

OPINIONS BELOW

The court of appeals decision (App. 1-35) is reported at 254 F.3d 551. The class certification opinion of the district court (App. 36-59) is reported at 2000 U.S. Dist. LEXIS 4633. The district court's class certification order (App. 60-61) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 18, 2001. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional and statutory provisions involved are set out in the appendix. App. 62-106.

STATEMENT

Introduction

Petitioners Irma Jean James and Terri Lary, plaintiffs in the district court, filed this class action lawsuit against the City of Dallas, Texas [City] and the United States Department of Housing and Urban Development [HUD] seeking remedies for the City's demolition of their single family houses. App. 2-3, 107-108.

Petitioner Irma James' single-family house was demolished in 1994 by the City of Dallas. The City placed a lien on her land for the City's demolition costs. App. 4. The City did not give Ms. James notice or a hearing on the pending demolition. App. 4. The house was demolished even though the City had determined it was repairable and not a nuisance. App. 4. It had been her family home from 1969 to 1981. Family members or other tenants resided in the building until it became vacant in 1994. App. 3. Ms. James testified she wanted a replacement unit on her existing lot because it would help improve the

African-American neighborhood. Government class action hearing exhibit A, page 33. The neighborhood was in a 68% black census tract in 1990. She is African-American. App. 3.

The City had demolished at least nine repairable single-family homes on Ms. James' street, Alabama, during the period 1992 through 1996. Exhibit 26, page 15.[1] The City demolished at least 47 repairable single family homes in her census tract during the period 1992 through 1996. Exhibit 26, pages 15-16.

Petitioner Terri Lary is African-American and owned a single-family house in a 98.5% black census tract. App. 4-5. The City classified the house as repairable. Ms. Lary made repairs on the house. The City nevertheless demolished the house claiming that she had not obtained the proper permits for the repairs and that she had failed to complete the repairs. The City did not provide Ms. Lary with notice that it intended to demolish the house or with an opportunity to contest the planned demolition. App. 5. Ms. Lary testified that the City's demolition cost lien was preventing her from placing another house on her property. Class action hearing transcript p. 62, lines 17-23.

When asked what she wanted from the lawsuit, Ms. Lary testified that putting another house on the lot she owned would be a remedy but unless other actions were taken to improve the neighborhood, one new house would not do any good. The property values of the other homes would need to be raised. She thought about another house somewhere else because if she built on her lot, the City could tear it down again. Government class action hearing exhibit B, page 24. The City demolished at least three repairable single-family homes on Ms. Lary's block during the period 1992 through 1996. The City demolished at least 55 repairable single-family homes in

---

[1] Plaintiffs' class action hearing exhibits are referred to as "Exhibit."

her census tract during the period 1992 through 1996. Exhibit 26, pages 1-2.

The demolition rate for repairable single-family houses in 90% black areas coming before the City's demolition board is 50.6%, over three times the rate, 14.9%, for similar structures located in 90% plus white areas. Thirty-one percent of the demolished repairable single-family houses in black areas were demolished without adequate notice to the owner. Only 6% of the houses demolished in white areas were demolished without notice. App. 54-55. At least 764 repairable single-family houses in predominantly black census tracts were demolished during the years 1992-1996. App. 57.

Petitioners sought relief for two classes of property owners whose repairable single-family homes had been demolished by the City. One class was composed of persons owning property and whose repairable single-family homes the City demolished without providing notice or other constitutional protections. The other class was composed of persons owning property whose repairable single-family homes had been demolished because of the owner's race or the race of the residents in the neighborhood.[2] The district court certified both classes under Fed. R. Civ. P. 23(b)(2). App. 60-61.

The court of appeals upheld the certification of the due process class but vacated the certification of the race

---

[2] There was a significant overlap between the classes. The due process class was a City-wide class but predominantly composed of owners in African-American neighborhoods. App. 37-38. The race discrimination class was defined, in part, by ownership of a demolished repairable single-family house in a predominantly African-American area. App. 38. The due process class included at least 580 persons. The race discrimination class included at least 764 persons. App. 57. About 450 property owners, including petitioners, were in both classes.

discrimination class and dismissed the race discrimination class claims. App. 25-26. The court vacated the race discrimination class and dismissed the race discrimination claims on the sole basis that injunctive relief would not redress the injuries and thus petitioners did not have standing. App. 25-26. The court assumed the injuries pled by petitioners were sufficiently concrete and an injury in fact and therefore satisfied the first prong of the Article III standing requirement. App. 15-16. Causation, the second prong of Article III standing, was not an issue. App. 16. The court of appeals held that the injunctive relief sought to remedy petitioners' race discrimination claims including an injunction against the continued use of the racial classifications or the continuation of the racially discriminatory demolitions would not remedy the ongoing effects of the past demolitions. App. 21-25. Thus, the court decided that petitioners did not have standing because their pleadings did not satisfy the third prong of the standing test, redressability. App. 19-26.

Proceedings in the district court and the court of appeals.

Petitioners' Third Amended Complaint, the pleading ruled on by the court of appeals (App. 9), stated that the City had demolished their houses, and the houses of others in the race discrimination class, because of the race of petitioners and the race of the persons in the neighborhoods in which petitioners and the class members lived. The complaint alleged that HUD knowingly participated in the City's racially discriminatory pattern and practice of demolishing repairable single-family houses by proposing and condoning the use of racial classifications and racial stereotypes in the City's neighborhood classification schemes and providing federal funding for the demolitions and the code enforcement program that caused the demolitions in the racially classified minority areas. App. 107-111.

The complaint alleged the current and past patterns of racially discriminatory demolitions of repairable single-family homes by the City of Dallas are directly traceable to overtly race conscious, racially discriminatory, and racially biased HUD and City housing and community development planning processes. HUD proposed and the City accepted and used a racial stereotype that African-American occupied housing and neighborhoods were inferior to white occupied housing and neighborhoods. This overt racial bias is at least one causal factor in the persistent pattern of the City's unequal demolition of single-family homes in African-American neighborhoods. App. 109.

Petitioners pled that the City and HUD were subjecting petitioners and the race discrimination class members to purposeful racial discrimination in the City's code enforcement demolition policies and practices. HUD has financed the code enforcement demolition process despite the racial purpose and discriminatory effects of the demolitions. The implementation of the City's code enforcement demolition policies and practices has resulted in disproportionate number of single-family unit demolitions in predominantly African-American neighborhoods and in the disproportionate demolition of repairable units in African-American neighborhoods. App. 109-110.

Petitioners requested the injunctive relief that was set out in the prayer for relief as the remedies sought on behalf of the race discrimination class. App. 114, 116-119.[3]

Petitioners also pled that the City had demolished petitioners' and other owners' repairable single-family homes without providing notice or an opportunity for a prior hearing on the proposed demolition and without a

---

[3] "26. Petitioners and the Rule 23(b)(2) class seek the injunctive relief against HUD and the City of Dallas set out in the prayer for relief." App. 114.

judicial warrant or other judicial process. Petitioners asserted this claim against the City alone. App. 108, 111.

The complaint sought relief for the owners of repairable single-family homes. App. 107, 111-114. The definition of "repairable" was based on the City's own standards and findings in the record of each case. App. 114-115. The definition of repairable used the City's own recommendations or determinations as the usual basis for a "repairable" determination. App. 55. For example, the City recommended repair and the City demolition board ordered repair rather than demolition for Ms. Lary's house. App. 5. The house was demolished because the City claimed she had defaulted on the repair order, not because it was un-repairable. App. 5. The City originally found Ms. James' house was suitable for use as infill housing on another lot, recommended, and ordered repairs rather than demolition. Exhibit 29. The City demolished Ms. James' house because it claimed she had defaulted on the repair order. App. 3-4.

The complaint alleged the demolitions violated the due process class members' rights under the Fourth and Fifth Amendments to the United States Constitution as made applicable to the City by the Fourteenth Amendment to the United States Constitution. The complaint alleged that the demolitions made housing unavailable because of race and violated 42 U.S.C. §§ 1981, 2000(d), 3604(a), 3608(e)(5), 5301(b)(2), 5309, and the Fifth Amendment to the United States Constitution. App. 115.[4]

A direct effect of the City and HUD's discrimination was the disproportionate demolition of repairable single-family units in predominantly African-American neighborhoods. "The implementation of the City's code enforcement demolition policies and practices has resulted in disproportionate number of single-family

---

[4] The Fifth Amendment claim was asserted only against HUD. App. 115.

unit demolitions in predominantly African-American neighborhoods and in the disproportionate demolition of repairable units in African-American neighborhoods." App. 110.

The discriminatory effect of the demolitions without the provision of replacement units caused other injuries to property owners in African-American neighborhoods, including petitioners and the plaintiff class members:

> 9. The disproportionate demolition of repairable single-family units in the predominantly African-American neighborhoods has perpetuated racial segregation of those neighborhoods and of the City. The disproportionate demolition without the provision of replacement units diminishes the number of units available for persons of any race to occupy. The disproportionate demolition without the provision of replacement units reduces the marketability of the remaining units in the neighborhoods, is a condition equated with slums and urban blight and discourages private and public investment. This causes a reduction in the property values of all the property in the African-American neighborhoods including the neighborhoods in which the named petitioners' property is located. Petitioners' Third Amended Complaint. App. 110.

Petitioners requested future oriented relief that would end the continued use of the overt racial classifications and policies and practices traceable to the use of overt racial classifications in the City's and HUD's housing and community development related activities, including housing demolition activities, within the City of Dallas. App. 117-119.

Petitioners sought relief that would directly address the primary discriminatory effect, disproportionate demolition of repairable single-family units in African-American neighborhoods without providing replacement units, by replacing the units demolished and eliminating

the demolition cost liens, the demolition cost debt, and the other effects of the demolition petitioners' title to the land. App. 116-119.

Petitioners sought two components in the replacement housing relief: comparable replacement housing for the class members and the eradication of the effects of the discrimination including the loss of single-family units caused by the federally funded code enforcement and code enforcement demolitions. Petitioners specifically sought replacement housing in the black neighborhoods where most of the demolitions occurred in order to begin a reversal of the neighborhood decline caused by the demolitions. App. 117-118. Petitioners requested implementation of a court-approved plan to eliminate the effect of the discrimination to the extent practical and to restore class members to the position they would have occupied absent the discrimination. App. 118.

The specific relief pled on behalf of petitioners and the race discrimination class members was:

* cancellation of the debt created by the demolition cost assessments and related costs,

* release of the liens and other action to clear the title to the vacant lots owned by the class members and prevent future enforcement, foreclosure, or other steps to enforce the liens,

* return of all money paid by class members for the demolition cost assessments,

* an end to the demolition of repairable houses in African-American neighborhoods or that were owned by African-Americans,

* an end to the demolition of repairable houses without providing notice and due process,

* the provision of a comparable replacement single-family housing unit,

* requiring HUD to administer its housing and community development related programs and activities to

eradicate the effects of HUD's discrimination including the effect of the loss of housing units and the resulting blight in African-American neighborhoods,

* the prohibition of the use of racial stereotypes in the classification of neighborhoods for purposes of conducting housing and community development related activities, including housing demolition,

* the prohibition against the continuation of policies and practices traceable to the use of racial stereotypes in the neighborhood classification schemes that continue to have discriminatory effects on conditions in African-American census tracts,

* implementation of a court approved plan to eliminate the effects of the racial discrimination to the extent practical by restoring the class members to the position they would have occupied in the absence of the conduct and prohibition on the use of federal funding for housing demolition and related activities until approval of such a plan,

* implementation of a HUD monitoring system to ensure HUD oversight and prevention of racial discrimination in federally funded demolition related activities, and

* any other appropriate relief. App. 116-119.

After a hearing, the district court entered its opinion certifying the classes. App. 9-11. The district court included the following facts in support of its conclusion that injunctive relief was appropriate for the classes.

Petitioners' documentary evidence showed that the current pattern of demolitions of repairable single-family homes in predominantly black areas is consistent with and traceable to the City's past use of overt racial classifications in determining the treatment accorded to different neighborhoods, and continues the targeting of predominantly black neighborhoods begun at the inception of the HUD and City's CDBG code enforcement and demolition program in the mid-1970s. This program was

initiated in tandem with the City and HUD's social engineering of neighborhood service delivery based on overt racial classifications. App. 40.

The City continues to classify predominantly African-American neighborhoods as inherently unstable and not worthy of protection from decline. App. 49. HUD continues to approve the City's use of racial classifications to determine the treatment of a neighborhood. App. 52. The municipal services and facilities provided to neighborhoods vary according to the neighborhood's classification. The City's 1993 Comprehensive Neighborhood Revitalization Strategies allocated City Capital Improvement and City bond funds based on the neighborhood classification scheme. Only the healthiest and most viable neighborhoods, Type 1 and Type 2 neighborhoods, receive the Capital Improvement and City bond funds. The less viable Type 3, 4 and 5 neighborhoods do not. App. 49.

HUD had previously required the City to produce a small number of demolished replacement units using City housing programs. App. 48-49. The evidence upon which this finding was based showed that in 1990, HUD required the City to replace housing units demolished with CDBG funds unless the City could show that the units were not only vacant when demolished but were also not suitable for rehabilitation. App. 56; Exhibit 9, page 3. During 1991 and 1992, the City replaced 17 single-family units and 54 multi-family units that had been demolished but were either occupied or suitable for rehabilitation under this requirement. Exhibit 10, 1-4.

There was other relevant evidence in the record.

According to the City's Housing Policy, the City should provide assistance to help owners of vacant land in the inner-city build housing on those lots. The Housing Policy states that this will stimulate reinvestment and promote neighborhood stability. Exhibit 8. The City's

Housing Assistance Plan 1979-82 concluded that a successful infill program would eliminate the detrimental effects of vacant lots, increase homeownership opportunities, increase public confidence in the neighborhoods, reduce energy costs, and increase City property tax revenues. Exhibit 7, pages 3-8.

The City's 1991 Housing Policy for the elimination and prevention of neighborhood blight is based, in part, on the foreclosure of its liens against vacant lots, the subsequent transfer of the land to new owners, and the provision of financial assistance to the new owner to construct infill housing on those lots. The Policy specifically states that this program can promote neighborhood reinvestment and improve neighborhood stabilization. Exhibit 8, pages 3, 8, 9, 11.

The City ordinance provides that the City's demolition expense constitutes a lien against the real property on which the structure stood and the City's lien attaches when notice of the lien is recorded. The lien is subordinate only to tax or previously recorded mortgage liens. Exhibit 15, Dallas City Code, page 11.

The district court found that both classes met the Fed. R. Civ. P. 23(a) and (b)(2) requirements and certified both classes. App. 60-61.

The City and HUD brought an interlocutory appeal of the class certification pursuant to 28 U.S.C. § 1292(b). App. 1-2.

The court of appeals found that the assessment of the City's demolition costs as a debt against the property owners, the filing and maintaining liens for the demolition costs and interest on the land, impending foreclosures for the debt, and other enforcement and collection actions were imminent injuries that continue to affect petitioners. The injuries burden petitioners' ownership of property and invade a legally protected interest. App. 15. The City's action demolishing the houses and imposing the debt, liens, and the infringement on a

legally protected interest satisfied the directly traceable standing requirement. App. 16. The requested injunctive relief canceling the debt, releasing the lien, ensuring clear title, and refraining from enforcement, foreclosure, or collection of the debts satisfied the redressability standing requirement. App. 16-17. However, the court of appeals allowed these findings to provide standing only for the due process class claims. App. 19.

The appeals court ruled that petitioners did not have standing to seek part of the injunctive relief requested on behalf of the due process class, that the petitioners did not have standing to seek any relief for the race discrimination class and that the requested injunctive relief for replacement units was a claim for damages and not appropriate for Fed. R. Civ. P. 23(b)(2) class relief. App. 17-18. The court of appeals modified the due process class certification to prohibit part of the injunctive relief sought. The court of appeals vacated the race discrimination class certification and remanded with instructions to dismiss all of the race discrimination class claims against the City and to dismiss HUD from the lawsuit. App. 25-26, 35.

Petitioners' request that the City cease demolitions of repairable structures owned by African-Americans or in African-American areas and that the City cease demolitions without due process was dismissed because petitioners' houses had already been demolished. App. 17. The court of appeals did not consider whether ending racially discriminatory and unconstitutional demolitions of other properties in petitioners' neighborhoods would benefit petitioners' property values by stopping the additional blighting effect of removing repairable homes and leaving additional vacant lots. App. 19-26, 110.

Holding that petitioners were not seeking replacement housing on their own lots, the appeals court dismissed the replacement housing relief because it would not increase the value of the property they already owned

and was more properly considered a request for compensatory damages. App. 18, 22. The court of appeals did not consider whether replacement housing on other lots in petitioners' neighborhoods would increase the value of petitioners' land or otherwise alleviate the other effects of the mass demolitions. App. 19-26, 110, 117-118.

The race discrimination class claims against the City and HUD were dismissed because the requested relief was held to be unlikely to cure the indirect economic and neighborhood injuries resulting from the disproportionate demolition of repairable single-family homes in minority areas. App. 21-25. The court of appeals did not rule on the effect of the requested relief on the redressability of the direct injury from the race discrimination, the demolition of the class members' single homes and the resulting assessment of demolition costs and the imposition of liens for those costs. It did not discuss the liens as redressable injuries for the race discrimination claims and held the replacement housing request to be either damages or a generalized grievance. App. 19-26, 116-119.

Petitioners' request for replacement housing was held to be a request for housing in other parts of the City that would not address the effects of demolition in the minority neighborhoods. App. 22. The requested injunction against the continued use of racial stereotypes in the classification of neighborhoods and against the continued discriminatory policies and practices traceable to the racial classifications did not satisfy redressability because it "may" not have any impact on the properties or the neighborhoods. App. 23. Petitioners' request for injunctive relief to remedy the loss of single-family houses as a direct and continuing effect of the discrimination was explicitly dismissed on prudential standing grounds. "Further if read as a sweeping request to generally eradicate the effects of discrimination, the request is not sufficiently targeted to remedy the named Petitioners'

personal injuries. *Cf. Warth v. Seldin*, 422 U.S. 490, 499, 45 L. Ed. 2d 343, 95 S.Ct. 2197 (1975) (recognizing that a "generalized grievance shared in substantially equal measure by all or most citizens" cannot provide standing to request injunctive relief.)" App. 24. The requested relief requiring HUD monitoring to prevent future discriminatory use of federal funds would not address the economic results of the past demolitions on the neighborhoods although it might be appropriate to prevent future injury from racial discrimination. App. 24.

REASONS FOR GRANTING THE PETITION

Ms. James and Ms. Lary are seeking injunctive relief for themselves and other property owners in black neighborhoods who have been and are being subjected to the City's systematic demolition of repairable single-family houses without providing replacement units for the owners or in the neighborhoods. App. 2-3, 107-111, 113-114, 116-119. The demolitions are directly caused by the continued use of racial stereotypes and other racial classifications that are used to classify the neighborhoods as inherently unviable. App. 40-56. The land on which each unit was located has been at least partially seized by a City demolition cost lien that continues to infringe on the owners' basic property interests. App. 4. The court of appeals dismissed the claim because the petitioners had not demonstrated that the injunctive relief would stop or remedy the past direct and indirect effects of the demolitions. The court avoided the question of the redressability of future injuries by mischaracterizing petitioners' claims as involving only future injuries from past demolitions. App. 19-26.

This Court has been emphatic that the use of racial classifications to determine the outcomes of government decisions is completely contrary to the Constitution and laws of our land and that the courts must eliminate the classifications and the effects of the classifications in the

programs or decisions. *Shaw v. Reno*, 509 U.S. 630, 643 (1993). The appeals court's use of redressability to dismiss the claim and leave petitioners and the other property owners subject to the race-conscious, confiscatory policies and practices of the City, policies and practices endorsed, supported, and financed by HUD, is just as contrary to the Constitution and laws of our land. If the purpose of standing jurisprudence is to preserve the exercise of judicial power to actual cases and controversies, its use to dismiss this case perverts the principle. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

1. The court of appeals held that a prospective injunction against the continued disproportionate demolition of repairable single-family homes in black neighborhoods would not remedy the ongoing economic effects of past racial discrimination on their particular properties. The court held that a prospective injunction against the use of racial stereotypes would not remedy the ongoing economic effects of past racial discrimination on their particular properties. Thus, the court concluded that the requested relief did not satisfy the redressability prong of Article III standing. App. 19-26. This judgment contradicts the controlling precedent of this Court by refusing to consider the efficacy of the requested prospective relief on the prevention of future injuries arising out of the future use of the classification scheme and the continued demolitions in black neighborhoods. *Texas v. Lesage*, 528 U.S. 18, 21 (1999); *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 211 (1995).

The court was obligated to consider the case as actually pled. Petitioners pled that the disproportionate demolitions had caused and were causing indirect effects on property values and other conditions in their and the class members' neighborhoods. App. 110. If, as petitioners pled, the continued use of the stereotypes and the continued demolitions continues to cause those indirect effects, prospective injunctive relief would at least stop

those effects from accumulating. The City's Neighborhood Revitalization scheme shows the need for an injunction against the continued demolitions. Under that classification scheme, the continued demolition of repairable single-family homes, and the resulting vacant lots, will continue to downgrade petitioners' neighborhood ranking. The presence of a high percentage of vacant land parcels is one of the factors ranking a neighborhood as a "Neighborhood Type 4: Advanced decline" or a "Neighborhood Type 5: Advanced decline and abandonment" instead of a "Neighborhood Type 3: Healthy/endangered declining neighborhoods with pockets of decline" or higher. Exhibit 11, pages 7-9. The percentage of vacant land parcels in a neighborhood is directly increased by the City's continued demolitions. Thus, the City's continued demolitions in those neighborhoods continues to impact the classification of the neighborhood. The classification determines the level of City resources to be provided to the neighborhoods. App. 49. There is surely a remedial benefit from stopping the continued creation of vacant parcels by demolition of the houses on the land and thus preventing the further lowering of the neighborhoods on the City's scale. If the past demolition of three repairable single-family homes on petitioner Lary's block discouraged private and public investment in her neighborhood and affected the value of her land, there is surely a remedial effect to stopping the City from demolishing one, two, three or more additional repairable single-family houses on her block.

The prospective relief will not alone restore petitioners' neighborhoods to the condition it would have been absent the discrimination. But petitioners do not have to show that any specific item of relief will eliminate all of their injuries, only that it may help. *Munoz-Mendoza v. Pierce*, 711 F.2d 421, 429 (1st Cir. 1983). Prospective relief against the continued implementation of a racially

discriminatory program alone is seldom sufficient to remedy the continued effects of past discrimination. The incomplete relief afforded by the simple command to stop discriminating on the basis of race in the distribution of benefits and burdens is the reason for the constitutional obligation to undertake relief to eradicate the policies and practices traceable to the prior discrimination that continue to have discriminatory effects. *United States v. Fordice*, 505 U.S. 717, 730-732 (1992); *Hills v. Gautreaux*, 425 U.S. 284, 293-294, 297 (1976). The requested injunction would eliminate the continued application of a race-based governmental scheme for the distribution of benefits and penalties to the neighborhoods in which petitioners still own property. *Adarand*, 515 U.S. at 210-211.

Adarand Construction Company had to show standing by offering convincing evidence that it was likely to bid again for a contract subject to the discriminatory affirmative action plan because, absent such future action by Adarand, there would be no future or imminent threat of injury. *Id.* at 21-212. But future injury to petitioners in this case is not dependent on their future actions. Whether or not they would choose to build another house in the neighborhood, their land is in the targeted neighborhoods and there is no act of their will or volition that can change the location. As the discriminatory demolitions continue, the number of vacant lots continues to increase. The increase continues to affect petitioners' property values and the municipal services and facilities provided to the neighborhood by the City. The court of appeals refusal to consider prospective relief leaves petitioners and the race discrimination class members subject to the continuing operation of a racially discriminatory system that continues not only the effects of past action but increases the effects by increasing the number of units demolished. These pernicious effects from the ongoing government of use racial classifications are not

immune from prospective relief. *Lesage*, 528 U.S. at 21. The petitioners had standing to obtain such relief.

2. The court of appeals' second reason for refusing to consider the requested injunction against the use of the racial classification was that petitioners did not plead a stigmatic injury from the use of the racial classification. App. 23. Stigmatic injury alone may or may not establish standing. This Court has yet to rule that the abstract use of racial classifications absent a connection with an activity that personally subjects a plaintiff to a denial of equal protection is an injury for Article III purposes. *Sinkfield v. Kelley*, 531 U.S. 28, 29-30 (2000). *Allen v. Wright*, 468 U.S. 737, 755 (1984). Petitioners have pled and introduced proof that racial classifications have been applied to the neighborhoods in which they own property in connection with a municipal program demolishing repairable single-family homes. App. 108-110, 117-119, 39-55. This is the stigma-plus injury that does confer standing under Article III. *Allen*, 468 U.S. at 755.The failure to plead an injury for which there is no standing cannot operate to eliminate the redressability of an injury that was pled.

The case cited by the court of appeals in support of its decision to deny standing to contest the use of the racial classification in the demolition scheme, *Walker v. City of Mesquite*, 169 F.3d 973, 980 (5th Cir. 1999), *cert. denied*, 528 U.S. 1131 (2000) (App. 23), does not support the stigma standing alone pleading requirement. *Walker* did not involve a challenge to a free-standing application of a racial classification. The white area residents were challenging the use of white as a racial classification in a public housing desegregation remedial order. Under that order, their predominantly white neighborhood had been chosen for the construction of two, forty-unit, public housing complexes. *Id.* at 978, 980. The court of appeals in that case held that the use of the racial classification to actually select the white neighborhoods for public housing was the injury that conferred standing to successfully

block the public housing, not just the inclusion of the classification in the decree. *Id.* at 980-981.

3. Petitioners' and the race discrimination class members' ability to do anything with their land is presently and continuously impaired by the demolition cost liens and the other incidents of the demolition cost debt imposed by the City on their land. App. 15. The court of appeals held that this ongoing effect satisfied all three prongs of the Article III constitutional standing test. The ongoing burdening of petitioners' property ownership is an actual and imminent injury, caused by the City's demolition of the houses, and likely to be redressed in a favorable decision. App. 15-17. Yet the appeals court ignored this effect in its consideration of standing to raise the race discrimination claims. App. 19-26.

The ongoing effects of the demolition cost liens are a direct effect of the demolition of the houses and are common to the members of both the due process and the race discrimination classes. The liens have the same effect on the property owner's title whether the lien was imposed because of a due process violation or a Fair Housing Act violation or both. The statement of the race discrimination class claim specifically requested the relief set out in the prayer for relief. App. 113-114. Petitioners' prayer for relief included a request for injunctive relief lifting the liens, abolishing the debts, and preventing any future collateral effects of the demolitions. App. 116-119.

The court of appeals' judgment refusing to consider the clear redressability of the effects for standing under the race discrimination class claims is directly in conflict with this Court's decisions on redressability. Under these decisions, petitioners had the burden to plead facts sufficient to establish standing at the pleading stage and to prove such facts later at trial. Their burden on the redressability prong is to show that it is "likely" rather than "merely speculative" that the injuries pled will be redressed by a favorable decision. *Bennett v. Spear*, 520

U.S. 154, 167 (1997); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). The burden will vary depending on whether the plaintiff is herself the object of the action or the foregone action. If she is, "there is ordinarily little question that the action or inaction has caused him injury and that a judgment preventing or requiring the action will redress it." *Lujan*, 504 U.S. at 561-562. "It can scarcely be doubted that, for a plaintiff who is injured or faces the threat of future injury due to illegal conduct ongoing at the time of suit, a sanction that effectively abates that conduct and prevents its recurrence provides a form of redress." *Friends of the Earth v. Laidlaw*, ___ U.S. ___, 145 L. Ed. 2d 610, 630 (2000). The petitioners were clearly the direct object of the action assessing the demolition cost debt and imposing the lien for that debt. If the demolitions were illegal because of racial discrimination, then an injunction removing the debt, lift the lien, and eliminate the other collateral effects would effectively abate those consequences.

4. The court of appeals' judgment that petitioners' remedial request for replacement units was a request for damages and not injunctive relief directly conflicts with the general principles set by decisions of this Court and rulings of other U.S. Courts of Appeals in similar cases.

Petitioners introduced evidence directly relevant to the inclusion of replacement housing units as meeting the redressability element of the standing inquiry. The City, in order to comply with HUD and statutory requirements to replace demolished, occupied or vacant but repairable dwelling units had instituted a small scale replacement housing program in the past. App. 48-49, 56. The City was currently under a legal obligation to produce additional dwelling units in public housing neighborhoods pursuant to a consent decree in the public housing desegregation case. App. 53-54. The City's own housing policy documents admitted that providing assistance to the owners of vacant lots to build housing on those lots

would eliminate the detrimental effects of vacant lots, increase homeownership opportunities, increase public confidence in the neighborhoods, promote neighborhood reinvestment and improve neighborhood stabilization. Exhibit 8. Both petitioners wanted replacement housing on their existing land. Government class action hearing Exhibit A, page 33; class action hearing transcript p. 62, lines 17-23. However, the demolition liens, by clouding title, prevent or obstruct petitioners from building new units on their land. App. 15.

The replacement housing relief sought by petitioners is within the range of and includes possible injunctive measures that have actually satisfied the redressability prong of the Article III standing requirement or that was actually ordered in similar cases. In *Munoz-Mendoza v. Pierce*, 711 F.2d 421 (1st Cir. 1983), minority residents of several Boston inner-city neighborhoods sued the City of Boston and HUD seeking judicial review of HUD's decision to fund a large City of Boston commercial re-development of a residential area. *Id.* at 422. The residents challenged HUD's decision on the grounds that it had been made without the required study of the possible negative impacts on residential racial integration in the area of the project. *Id.* at 423. The relief sought was, first, an order requiring the proper study, and second, if the study bore out their contentions about the negative impact, an order requiring HUD to spend additional funds to keep their neighborhood integrated "or otherwise insulate them from the effects of racially unequal residential placement." *Id.* The petitioners claimed that HUD's actions violated the Fair Housing Act and other statutes. *Id.* at 424.

The district court dismissed the case on Article III standing grounds. *Id.* at 423. The defendants' argument was that the grant did not cause the negative impact but the independent actions of landlords and home buyers. The district court held that, after discovery, petitioners

had not shown the HUD grant would cause the injuries and that there was no remedy for the claim since withdrawal of HUD funding would not lead to the abandonment of the project. *Id.* at 424. The U.S. Court of Appeals for the First Circuit reversed as to six of the seven individual petitioners. *Id.* at 428. The appeals court held that the injury was redressable. The petitioners were seeking an order requiring a racial impact study and the redirection of some of the grant money "in a way that redresses the petitioners' cognizable injuries." *Id.* at 429. Without passing on the question whether the petitioners were entitled to the relief, the court held:

> At this stage of the proceeding, however, it seems safe to say that the district court has the power to provide such relief in appropriate circumstances. Certainly, the record provides no factual basis for finding that, should the petitioners prevail on all their other arguments, such relief could *not* help to cure the injury of which they complain. *Id.* at 429.

In *Davis v. United States Department of HUD*, 627 F.2d 942 (9th Cir. 1980), the issue was HUD's and the city's failure to provide the housing assistance required by the federal Community Development Block Grant Act. *Id.* at 943. Low-income residents of the city brought suit to require the provision of the required low-income housing, to enjoin the city's expenditure of the funding until the obligation was met, and to enjoin HUD's disbursal of the funding until the obligation was met. *Id.* at 944. The court of appeals held that redressability had been demonstrated. The court reasoned that since the withholding of a benefit claimed to be owed is sufficient to establish that the injury was caused by the action of the defendants, it could be redressed by the court. The speculation that the city might opt out of the program rather than provide the benefit – housing – did not defeat redressability. *Id.* The relief available from HUD that satisfied the redressability requirement was to be framed in a manner that allowed

HUD to make the initial determination of what corrective measures should be taken to remedy the violation of the law in its own program. *Id.* at 946.

The issue of injunctive relief for replacement housing and other actions arose in *Garrett v. City of Hamtramck*, 503 F.2d 1236 (6th Cir. 1974), subsequent appeal and unpublished opinion at 863 F.2d 48 (6th Cir. 1988), not on a standing issue but on the City of Hamtramck's and HUD's appeal of the remedial order. The order included a requirement that Hamtramck and HUD provide replacement housing units to those whose homes had been demolished. The remedy followed a finding that Hamtramck and HUD had used the city's urban renewal program to demolish housing in the predominantly black neighborhoods in a manner that discriminated because of race.[5] The court of appeals held that:

> HUD may properly be enjoined from providing any assistance to the City with respect to these projects unless a satisfactory plan for relocation of persons to be displaced thereby is presented to HUD and approved by it and the district court. 503 F.2d at 1248.

The court ruled that, with respect to the demolition of units occupied by blacks that had been demolished as a result of the city's urban renewal plans:

> The City will be required to determine the identity and present location of these displaced persons and determine whether they desire to return to Hamtramck if low and medium cost housing is offered to them in the expanded Wyandotte area. . . . The court was clearly correct in directing that the Wyandotte project be primarily residential and that, in addition to providing housing for senior citizens, a majority

---

[5] The remedial class did not include those displaced by enforcement of building codes because there was no proof of discrimination in that enforcement. 503 F.2d at 1245-1246.

> of whom are white, the defendants have an obligation to provide low and moderate income housing in the expanded Wyandotte area for those being displaced and those who have been displaced by the Denton-Miller and Grand-Haven projects. . . . Only after the court is advised of the number of persons desiring to have replacement housing provided in the City of Hamtramck and the needs of such persons with respect to the size of accommodations, can the court accurately direct the numbers of each type accommodation which the defendants should be required to provide. *Id.* at 1248.

The *Garrett* court approved remedial provisions requiring an end to code enforcement unless replacement housing is provided if the relief was necessary to guarantee the rights of petitioners by assuring the availability of replacement housing. The provision enjoining the city from any action which would eliminate housing or facilitate the elimination of housing until the relocation housing requirements of all eligible displacees were met was approved. *Id.* at 1248-1249.

Petitioners James and Lary have pled a direct connection between the direct injury – demolition of their single-family houses – and the continuing effects on the African-American neighborhoods in which the demolitions were disproportionately taking place. App. 109-111. In addition, petitioners showed that the City's own Housing Policy and Neighborhood Revitalization Program documents proposes the provision of assistance to owners of vacant lots to build new infill units as part of the City's housing policy that will also contribute to the revitalization and reinvestment in the neighborhoods. Plaintiffs' class action Exhibit 8. The City has implemented such a replacement housing program for demolished dwelling units in the past. App. 48-49. The provision of such replacement units and other ancillary injunctive relief has been recognized as redress for

wrongful demolition of dwelling units by Congress and other courts of appeals in similar cases. The specific facts and the decisions of the other courts of appeals satisfy the petitioners' burden under the relevant decisions of this Court. *Friends of the Earth*, ___ U.S. at ___, 145 L. Ed. 2d at 630-632; *Bennett v. Spear*, 520 U.S. 154, 169-170 (1997); *Lujan*, 504 U.S. at 561.

Categorizing the replacement housing units as damages rather than injunctive relief is not justified by either the pleadings or the evidence. Providing City assistance to owners of vacant lots to build dwelling units on those lots is part of the City's own housing policy. An order requiring implementation of this program on behalf of petitioners and class members would be injunctive relief, not damages. The variety of ways, short of damages, that an injunctive order could provide such replacement housing is set out in the cases already cited.

Both HUD and the City have housing programs that can be used as part of an equitable remedy to provide replacement housing units either for the petitioners or for others in the black neighborhoods decimated by the demolitions.

The provision of replacement housing for privately owned demolished housing is a statutory requirement of the Community Development Block Grant program. 42 U.S.C. § 5304(d)(2)(A)(i).[6]

> Governmental agencies or private developers shall provide within the same community comparable replacement dwellings for the same number of occupants as could have been housed in the occupied and vacant occupiable low and moderate income dwelling units demolished or converted to use other than for housing for low

---

[6] The regulation implementing this statute is 24 CFR § 42.375(a).

> and moderate income persons. . . . 42 U.S.C. § 5304(d)(2)(A)(i).[7]

HUD's own programs can be used to remedy the discriminatory conduct. Congress gives HUD the authority and funding to finance the construction or acquisition of housing and to transfer that housing to private individuals. HUD provides funding to city governments for loans, land acquisition, new construction, or rehabilitation of housing that will belong to private persons. 42 U.S.C. § 5305(a)(24); 42 U.S.C. § 5308(a); 42 U.S.C. § 12742(a)(1).

Congress has made available federal funds for local governments to use in developing through new construction and other means affordable housing. Under the HOME Investment Partnerships Act, specific funds, HOME funds, are available for the City to use to remedy the illegally demolished homes.

> Funds made available under this subtitle may be used to develop and support affordable rental housing and homeownership affordability through the acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing. . . . 42 U.S.C. § 12742(a)(1).[8]

The inclusion of replacement housing as appropriate injunctive relief and thus as satisfying the redressability requirement is shown by the relief sought and obtained by the U.S. Department of Justice. The Department recently approved and argued for replacement housing as injunctive relief in a consent decree providing a remedy for the racially discriminatory use of code enforcement

---

[7] This is the statutory and regulatory requirement for the small scale replacement housing program implemented by the City in the early 1990s. App. 48-49, 56.

[8] The regulation implementing the statute is 24 CFR § 92.205(a).

and demolitions against minority neighborhoods. The U.S. Department of Justice, residents, and property owners in two Hispanic neighborhoods in the Village of Addison, Illinois sued to enjoin the Village's use of housing demolition and neighborhood redevelopment activities in those neighborhoods alleging violations of the Fair Housing Act. *Hispanics United v. Village of Addison*, 988 F. Supp. 1130, 1135 (N. D. Ill. 1997). The consent decree approved in the case included the following injunctive relief elements:

> A. a ban on future housing discrimination by the Village,
>
> B. a City implemented redevelopment plan for the neighborhoods that provided for the construction of new affordable housing in or near the neighborhood for persons previously displaced from the area,
>
> C. relocation assistance for those displaced by the redevelopment plan, and
>
> D. fair housing education for Village officials and employees and the residents of the Village. *Id.* at 1144-1148.

The affordable, new, single-family and duplex units for ownership by the previously displaced residents and any residents to be displaced in the future are to be funded with unspecified financial assistance or subsidies. *Id.* at 1146. The district court approved the consent decree in large part because of the U.S. Department of Justice's support for the relief and expressly commended the Department for its pivotal role in resolving the litigation. *Id.* at 1170.

Petitioners' pleading for injunctive relief requiring the use of City and HUD programs to provide replacement units for themselves, the race discrimination class members, and the neighborhoods on the vacant lots created by the demolitions does not state a claim for damages as opposed to equitable relief. The court ordered

relief requiring the specific use of funds in the manner those funds were appropriated for is not money damages. *Bowen v. Massachusetts*, 487 U.S. 879, 893 (1988); *Katz v. Cisneros*, 16 F.3d 1204, 1208 (Fed. Cir. 1994); *Zellous v. Broadhead Associates*, 906 F.2d 94, 98-99 (3rd Cir. 1990). The appeals court's contrary determination that it does constitute damages or monetary compensation was done without discussion except for a cite to *Jaffee v. United States*, 592 F.2d 712, 715 (3rd Cir. 1979). *Jaffee* was decided ten years before and conflicts with *Bowen*.

The appeals court's dismissive treatment of all the requested relief, including replacement housing, shows the wisdom for the cautionary statement about the redressability prong of Article III standing in Wright, Miller, Cooper, "Federal Practice and Procedure."

> The simplest problem is that predictions of remedial benefit may be skewed as to recognize, deny, or simply confuse standing. This problem verges into the difficulties of remedial decisions – there is a risk that standing will be denied because hasty remedial determinations made at a preliminary stage do not reflect the full inventiveness that could be exhibited after trial. Vol. 13 § 3531.6, page 464 (2001).

The court of appeals made hasty, and wrong, remedial determinations without even considering the full scope of the requested relief on all of petitioners' direct and indirect, past, present, and future injuries. Its determination that the City's and HUD's use of racial considerations were therefore beyond the scope of judicial redress diminishes the protection against race discrimination provided by Congress. 42 U.S.C. §§ 3601, 3604(a), 3613.

5. Petitioners are seeking relief under the Fair Housing Act, 42 U.S.C. §§ 3604(a) and 3608(e)(5). App. 115. The court of appeals explicitly used a judicially created, prudential standing doctrine to dismiss petitioners' race discrimination claims, including the claims

under the Fair Housing Act. In ruling that Petitioners' request for injunctive relief to remedy the loss of repairable units as a direct and continuing effect of the discrimination did not satisfy redressability, the court stated:

> Further if read as a sweeping request to generally eradicate the effects of discrimination, the request is not sufficiently targeted to remedy the named Petitioners' personal injuries. *Cf. Warth v. Seldin*, 422 U.S. 490, 499, 45 L. Ed. 2d 343, 95 S.Ct. 2197 (1975) (recognizing that a "generalized grievance shared in substantially equal measure by all or most citizens" cannot provide standing to request injunctive relief.) App. 24.

The court of appeals also cited the discussion of the judicially created, prudential, generalized grievance consideration in *Pederson v. Louisiana State University*, 213 F.3d 858, 869 (5th Cir. 2000), as support for its dismissal of the race claims. App. 14. The *Warth* opinion cited by the appeals court explicitly identifies the generalized grievance principle as a judicially created limit that is in addition to the minimum constitutional mandate of Article III. *Warth v. Seldin*, 422 U.S. 490, 499 (1975). However, the use of the prudential, non-Article III standing consideration to dismiss petitioners' race claims violates the Fair Housing Act provision, 42 U.S.C. § 3613(a), giving standing to any person aggrieved and this Court's decisions barring the use of prudential considerations to deny standing in Fair Housing Act case.

This Court has always held that Congress intended to eliminate the use of all but the minimum Article III considerations in determining standing under the Fair Housing Act. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 376 (1982); *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91, 109 (1979); *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 209 (1972). The use of the judicially created, prudential standing considerations explicitly contradicts the decisions of this Court that standing under the Fair

Housing Act has been expanded to the full extent permitted under Article III. *Bennett v. Spear*, 520 U.S. 154, 165-166 (1997). The court of appeals' use of such a prudential consideration to dismiss petitioners' Fair Housing Act claims violates the Congressional mandate. *Id.* at 164-165.

CONCLUSION

The petition for the grant of the writ of certiorari should be granted.

Respectfully Submitted,

MICHAEL M. DANIEL
Counsel of Record
LAURA B. BESHARA
Attorneys for Petitioners
MICHAEL M. DANIEL, P.C.
3301 Elm Street
Dallas, Texas 75226-1637
214-939-9230
214-939-9229 fax

REVISED JULY 17, 2001

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 00-10556

IRMA JEAN JAMES; TERRI LARY

Plaintiffs-Appellees

v.

CITY OF DALLAS TEXAS; ET AL
CITY OF DALLAS TEXAS; US DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Defendants-Appellants

Appeal from the United States District Court
for the Northern District of Texas

June 18, 2001

Before KING, Chief Judge, and ALDISERT[1] and BENAVIDES, Circuit Judges.

KING, Chief Judge:

Defendants-Appellants the City of Dallas, Texas and the United States Department of Housing and Urban Development bring this interlocutory appeal, pursuant to

---

[1] Circuit Judge of the Third Circuit, sitting by designation.

28 U.S.C. § 1292(b), challenging the district court's Rule 23(b)(2) certification of a "Race Discrimination Class" and a "Process Class" in a class action lawsuit involving alleged racially discriminatory demolition of repairable single-family homes without proper notice or judicial warrant. Because we determine that the named Plaintiffs do not have standing to seek the relief requested for the "Race Discrimination Class," we VACATE the district court's certification of that class and REMAND with instructions to dismiss all the Race Discrimination Class claims against the City and HUD and to dismiss HUD from the lawsuit. Because we determine that the named Plaintiffs do have standing to seek the relief requested for seven of their twelve Process Class claims against the City and we determine further that the district court did not abuse its discretion in certifying the "Process Class," we AFFIRM AS MODIFIED the district court's certification of that class. Finally, because we determine that the named Plaintiffs do not have standing to seek the relief requested for five of their Process Class claims, we REMAND with instructions to dismiss those claims.

I. FACTUAL BACKGROUND

This case arises out of a proposed class action lawsuit against Defendants-Appellants the City of Dallas, Texas (the "City") and the United States Department of Housing and Urban Development ("HUD"). Plaintiffs-Appellees, Irma Jean James and Terri Lary (collectively referred to as the "named Plaintiffs" or "Plaintiffs"), assert two claims against the City: first, a Process Class claim charging that the City demolished "repairable" single-family homes in predominantly minority neighborhoods without

proper notice, in violation of due process under the Fifth and Fourteenth Amendments, and without a warrant, in violation of the Fourth Amendment;[2] and second, a Race Discrimination claim charging that the City has implemented this "no-notice" demolition program of repairable minority housing because of the race of the occupants or the race of the owners of the property, in violation of 42 U.S.C. §§ 1981, 2000d, 3604(a), 5301(b)(2), and 5309. Plaintiffs assert one Race Discrimination Class claim against HUD, charging that HUD was aware of the City's purposeful discrimination and that the City used HUD funds to implement its program, in violation of 42 U.S.C. §§ 1981, 2000d, 3604(a), 3608(e)(5), and the Fifth Amendment. Further, Plaintiffs assert that this discrimination is directly traceable to HUD's use of explicit racial classification of neighborhoods.

A. Factual Circumstances of the Named Plaintiffs

Irma Jean James is one of the two named Plaintiffs. She is an African-American woman who owned a single-family residence located at 2404 Alabama Avenue in the Oak Cliff area of the City. The Oak Cliff area has a population that is 68% "black"[3] according to the 1990 Census. James resided in the home from 1969 to 1981, and then family members or other tenants resided in the building until 1993. The building became vacant in 1994.

---

[2] Both claims were brought pursuant to 42 U.S.C. § 1983.

[3] The term "black" is the designated racial classification adopted by the United States Census.

The Dallas Urban Rehabilitation Standards Board ("URSB") assessed her house to be repairable and not a nuisance; however, URSB still proceeded with a demolition order against it. As part of the demolition process, the URSB held a hearing concerning the demolition of the house. The hearing revealed that the tax assessment value of the property was $12,480, that the repair cost of the house would have been $42,416, and that the cost of demolition was $2,569. City inspectors provided information that numerous code violations existed on the property.

James was not provided with notice of the URSB proceedings concerning the property. At the time of the hearings, James resided in Duncanville, a suburb of Dallas. In 1992, a URSB notice was sent to the vacant Alabama Avenue address, which was returned by the post office as undeliverable. Also in 1992, the URSB order for repair and demolition was sent to James at an address on Zeb Street in Dallas. Neither James nor anyone associated with James has ever lived on Zeb Street. This order was also returned to the URSB as being undeliverable. The City mailed the final default demolition order to the same Zeb Street address. Throughout these years, James paid her property taxes for the property through her mortgage company. She did not own any other property in the City. The City demolished the house in February 1994 and placed a lien on the property for the costs of demolition.

The second named plaintiff is Terri Lary, an African-American woman who owned a single-family residential

house located at 3902 Coolidge Street, Dallas. The property is in a census tract that is 98.5% black. The City classified the house as repairable.

The URSB conducted a hearing concerning the Lary property. The tax assessment of the property was $7,380, with the estimated costs of repair at $16,332.50 and demolition costs to run $837.21. Notice of the hearing was sent to an incorrect address; however, Lary did receive actual notice of the hearing and appeared at the proceedings. URSB issued a repair order with a default to demolish the structure if repairs were not adequately completed. Lary made some of the requested repairs. According to the City, Lary failed to obtain the necessary permits required for the repairs and failed to complete the repairs. URSB sent a default notice to the same wrong address and to the house itself. The postal service returned both notices. Lary did not receive final notice that she was in default of the repair order or notice that the City intended to demolish the house. During this time, she was living at another address in Dallas. In 1995, the City demolished the house.

B. Factual Background of Class Claims

The facts underlying the Process Class claims, as alleged by Plaintiffs, are that between 1992 and 1996, the City demolished 580 repairable single-family homes without providing adequate notice to the owners. According to Plaintiffs, all 580 homes were demolished without a warrant or other judicial process.

The facts underlying the Racial Discrimination Class claims are more complicated. For purposes of class certification, the district court adopted the findings of fact

asserted by Plaintiffs. These findings purport to show that the City considered the race of the occupants of the area or the race of the property owner in deciding whether to demolish an otherwise repairable house.[4] The district court found:

> Plaintiffs' documentary evidence shows that the current pattern of demolitions of repairable single-family homes in predominantly black areas is consistent with and traceable to the City's past use of overt racial classifications to determine the treatment accorded to different neighborhoods. The present pattern of single-family demolitions continues the targeting of predominantly black neighborhoods begun at the inception of the HUD and the City's CDBG [Community Development Block Grant] code enforcement and demolition program in the mid-1970's. This program was initiated in tandem with the City and HUD's social engineering of neighborhood service delivery based on overt racial classifications at the inception of the CDBG program.

In short, the facts put forth by Plaintiffs demonstrate that the City allegedly used overt racial classifications to determine the neighborhoods in which the URSB would

---

[4] For purposes of class certification, the district court adopted extensive statistical and documentary evidence submitted by Plaintiffs showing racially discriminatory actions of the City that affected municipal and housing services in minority neighborhoods. *See James v. City of Dallas*, No. CA398CV436R, 2000 WL 370670, at *2-*9 (N.D. Tex. Apr. 11, 2000).

focus its demolition activities.[5] Further, Plaintiffs argue that the City demolished repairable single-family homes located in predominately black census tracts at a much higher rate than in comparable white census tracts. HUD allegedly approved of and financed this discriminatory demolition.

II. PROCEDURAL BACKGROUND

In February 1998, James filed a suit for damages against the City and the administrator of the URSB alleging violations of due process and the Fourth Amendment and also raised a discrimination claim. In November 1998, James amended her complaint as a Rule 23(b)(2) class action. The amended complaint dropped the suit against the URSB administrator, added Lary as a named plaintiff, and added HUD as a defendant.

---

[5] For purposes of class certification, the district court found that HUD distributed manuals to cities that received CDBG funding, including the City of Dallas, and that these manuals utilized explicit racial classifications. For example, a HUD-distributed manual entitled "The Dynamics of Neighborhood Change" rated communities as "Healthy" or "Clearly Declining" based in part on the percentage and migration of minority occupants. This HUD manual, which allegedly is still being distributed, defines a "Clearly Declining" community as undergoing a change involving a "Decrease in White Move-Ins" and "More Minority Children in Schools." Other studies used by HUD and the City also include overt racial classifications. The district court adopted Plaintiffs' assertions that the City planned its housing based on race-based criteria and also focused its code enforcement and demolition based on this same racial criteria. The factual basis for these assertions are amply detailed in the district court's Memorandum Opinion. *See James*, 2000 WL 370670, at *2-*9.

Plaintiffs requested injunctive relief against the City and HUD on behalf of the class members. Plaintiffs sought a permanent injunction against the City, requesting that the City (1) cancel the debt assessed for demolition costs and associated fees/interest, and file notice in the public deed record that the debt was cancelled, (2) file a release of the demolition lien in the public deed records, (3) ensure that title is clear on the property, (4) ensure that all City records concerning the property show the debt cancelled, (5) refrain from taking any steps to enforce the lien or collect the debt, (6) return money paid with interest by class members for money paid for demolition and related costs, (7) set aside all foreclosures based on demolition liens against the property, (8) refrain from foreclosures based on demolition liens, (9) refrain from retaliatory action such as refusing to issue building permits, (10) cease demolition of repairable structures in African-American areas or structures that are owned by African-Americans, and (11) cease demolition of repairable structures without adequate notice and due process.

Further, the Plaintiffs sought a permanent injunction directed against the City and HUD to provide "each class member with clear title to a comparable replacement single-family housing unit or enter equivalent injunctive relief."[6]

---

[6] The Plaintiffs also sought alternative relief under Federal Rule Civil Procedure 23(b)(3) for damages if the injunctive relief was not available. This alternative relief was sought only against the City and not HUD. Because the district court did not certify the class under Rule 23(b)(3), we do not address the possibility of certifying the class on an alternate ground.

The district court granted Plaintiffs leave to file a Third Amended Complaint.[7] In addition to the above sought relief, this Third Amended Complaint requests the following: (1) a permanent injunction requiring HUD to administer all of its housing programs in a manner that will eradicate the effects of HUD's discriminatory demolition practices; (2) a permanent injunction against the City and HUD prohibiting use of overt racial stereotypes in the classification of neighborhoods for purposes of housing demolition activities; (3) a permanent injunction against the City and HUD prohibiting use of overt racial stereotypes in the classification of neighborhoods that have a discriminatory effect on the conditions of predominantly black census tracts; (4) a permanent injunction requiring the City and HUD to implement a court-approved plan to eliminate the effects of the City's and HUD's discrimination; (5) a permanent injunction prohibiting continued HUD funding for the City's housing code enforcement in predominantly black census districts until a court-approved plan is put into effect; and (6) a permanent injunction requiring HUD to establish, maintain, and use a monitoring system to determine whether the City is discriminating in its housing demolition activities.

On April 4, 2000, the district court held a certification hearing and granted Plaintiffs' motion for class certification pursuant to Federal Rule Civil Procedure 23(b)(2).

---

[7] The Third Amended Complaint was submitted on September 25, 2000, after the district court had certified the class. Both the City and HUD apparently agree that the modified requests included in the Third Amended Complaint are properly before this court.

The following classes were conditionally certified by the district court:

> (1) *Process Class*: a Rule 23(b)(2) class composed of all property owners who had a repairable[8] single-family structure demolished by the City of Dallas' Urban Rehabilitation Standards Board ("URSB"): (i) and the City demolished the structure without providing the property owner notice of the opportunity to contest the proposed demolition at a hearing prior to the issuance of the order causing the demolition, (ii) and whose structure was demolished without a warrant.[9] This class includes

---

[8] The district court defined "repairable" as a single-family house which meets at least one of the following criteria:

> a) the estimated or actual costs of repair was equal to or less than the property tax assessed value of the structure or equal to or less than actual market value,
>
> b) there is no certification in the URSB file that the structure is non-repairable,
>
> c) the City code enforcement URSB referral recommends that the URSB order repairs,
>
> d) the URSB staff recommendation to the URSB is that the URSB order repairs, or e) the URSB ordered repairs to the structure.

[9] The district court certified the classes before this court decided *Freeman v. City of Dallas*, 242 F.3d 642 (5th Cir. 2001) (en banc). In *Freeman*, this court addressed a Fourth Amendment challenge to the City of Dallas's warrantless seizure and destruction of buildings as urban nuisances. *See id.* at 654. The court held that the seizure of buildings designated "nuisances" pursuant to established and non-arbitrary police power procedures was not rendered per se unreasonable by the city's failure to obtain a warrant to enforce a demolition order. *See id.* As currently formulated, the Process Class does not reflect the

> those owners who [sic] structures were demolished pursuant to a default demolition order.
>
> (2) *Race Discrimination Class*: a Rule 23(b)(2) class composed of all persons who share the following characteristics: (i) owners of at least one parcel of real property on which a single-family structure was placed, (ii) and which single-family structure was a repairable single-family structure that was demolished pursuant to a City URSB order, (iii) and either the owner is African-American or the repairable single-family unit demolished pursuant to the City URSB order was located in a predominately black census tract that was 50% or more non-Hispanic black according to the 1990 U.S. census.

The City and HUD timely appeal the grant of class certification.

III. STANDARD OF REVIEW

"We review a district court's class certification decisions for abuse of discretion." *Pederson v. La. State Univ.*, 213 F.3d 858, 866 (5th Cir. 2000). "The district court maintains great discretion in certifying and managing a class action. We will reverse a district court's decision to certify a class only upon a showing that the court abused its discretion, or that it applied incorrect legal standards in reaching its decision." *Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 624 (5th Cir. 1999) (citations omitted).

---

considerations necessitated by *Freeman*. On remand, the district court will be required to evaluate the effect of *Freeman* on the Process Class.

"Whether the district court applied the correct legal standard in reaching its decision on class certification, however, is a legal question that we review *de novo*." *Allison v. Citgo Petroleum Corp.*, 151 F.3d 402, 408 (5th Cir. 1998).

IV. ARTICLE III STANDING

We first address the named Plaintiffs' standing to bring this class action suit. "Jurisdictional questions are questions of law, and thus reviewable *de novo* by this Court." *Pederson v. La. State Univ.*, 213 F.3d 858, 869 (5th Cir. 2000) (citations omitted). The City and HUD assert that the named Plaintiffs do not have standing to bring either their Process Class claims or their Race Discrimination Class claims. The district court did not address this issue. However, because standing goes to the constitutional power of a federal court to entertain an action, this court has a duty to address it. *See Bertulli v. Indep. Ass'n of Cont'l Pilots*, 242 F.3d 290, 294 (5th Cir. 2001); *see also Pederson*, 213 F.3d at 866 n.5.[10]

---

[10] In cases in which statutory standing is involved, we may address statutory standing before Article III standing. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 97 (1998) (suggesting that "a statutory standing question can be given priority over an Article III question"). In *Ortiz v. Fibreboard Corp.*, the Supreme Court addressed this issue in the context of class certification:

> Ordinarily, of course, this or any other Article III court must be sure of its own jurisdiction before getting to the merits. But the class certification issues are, as they were in *Amchem* [*Products, Inc. v. Windsor*, 521 U.S. 591, 612-13 (1997)], "logically antecedent" to Article III concerns, and themselves pertain to statutory standing, which may properly be treated

Standing is a jurisdictional requirement that focuses on the party seeking to get his or her complaint before a federal court and not on the issues he or she wishes to have adjudicated. *See Pederson*, 213 F.3d at 869. "A litigant must be a member of the class which he or she seeks to represent at the time the class action is certified by the district court." *Sosna v. Iowa*, 419 U.S. 393, 403 (1975). If the litigant fails to establish standing, he or she may not seek relief on behalf of himself or herself or any other member of the class. *See O'Shea v. Littleton*, 414 U.S. 488, 494 (1974).

The Supreme Court has recognized three requirements of Article III standing:

> It is by now well settled that "the irreducible constitutional minimum of standing contains three elements. First, the plaintiff must have suffered an 'injury in fact' – an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of. . . . Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision."

---

before Article III standing. Thus the issue about Rule 23 certification should be treated first, "mindful that [the Rule's] requirements must be interpreted in keeping with Article III constraints."

527 U.S. 815, 831 (1999); *see also Amchem*, 521 U.S. at 612-13; *Pederson*, 213 F.3d at 866 n.5. In this case, we address Article III standing first.

United States v. Hays, 515 U.S. 737, 742-43 (1995) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). For injunctions, an additional inquiry is required, namely that Plaintiffs show that they are likely to suffer future injury by the defendant and that the sought-after relief will prevent that future injury. *See City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983) (" 'Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief.' " (quoting *O'Shea*, 414 U.S. at 495-96)); *see also Pederson*, 213 F.3d at 869 ("Additionally, courts have refused to adjudicate cases that raise only generalized grievances."). However, if the injury is accompanied by "any continuing, present adverse effects," standing for injunctive relief can be found. *Lyons*, 461 U.S. at 102 (internal quotations omitted) (quoting *O'Shea*, 414 U.S. at 495-96); *see also Soc'y of Separationists, Inc. v. Herman*, 959 F.2d 1283, 1285 (5th Cir. 1992) ("To obtain equitable relief for past wrongs, a plaintiff must demonstrate either continuing harm or a real and immediate threat of repeated injury in the future.").

Both standing and class certification must be addressed on a claim-by-claim basis. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 105 (1998); *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC) Inc.*, 528 U.S. 167, 185 (2000); *Bolin v. Sears, Roebuck & Co.*, 231 F.3d 970, 976 (5th Cir. 2000). In addition, at least one named Plaintiff must have standing to seek injunctive relief on each of the claims against the City and HUD. *See Griffin v. Dugger*, 823 F.2d 1476, 1483 (11th Cir. 1987). We turn first to determine whether Article III standing exists to support the claim for injunctive relief sought on behalf of the Process Class against the City. Then, we examine whether

Article III standing exists to support the claim for injunctive relief sought on behalf of the Race Discrimination Class brought against the City and HUD.

A. Standing for Process Class Claims Against the City

Plaintiffs' Process Class claims are directed solely against the City. The named Plaintiffs argue that the ongoing effects of the demolition of their repairable homes present continuing and adverse effects to their property, and that the injunctive remedies sought will directly redress those ongoing effects. The named Plaintiffs point to the fact that the City has imposed a collectible debt on Plaintiffs for costs, filing fees, and expenses arising from the demolition and that this debt incurs ongoing interest charges. Further, the named Plaintiffs point to the continued liens the City holds on their properties, which affects title to the properties and the named Plaintiffs' credit ratings. Finally, the named Plaintiffs allege that impending foreclosures, enforcement actions, and collection actions based on the demolition liens are imminent injuries that continue to affect them personally and also affect the class as a whole.

The above allegations are sufficient to prove an "actual" and "imminent" "injury in fact" to the named Plaintiffs. *See Lujan*, 504 U.S. at 560-61. The ongoing effect, which allegedly burdens the Plaintiffs' ownership of property, is personal and invades a legally protected interest. *See Pederson*, 213 F.3d at 871 ("As a general matter, injury in fact is the invasion of a legally protected interest." (internal quotations omitted)). The continued

threat of collection actions or foreclosures by the City based on the unpaid debt also suffices to demonstrate the likelihood of real and immediate future injury. *See O'Shea*, 414 U.S. at 494.

In addition, there is little doubt that the named Plaintiffs have established the "causal connection" element of Article III standing for their Process Class claims against the City. Causation requires that the injury be "fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." *La. ACORN Fair Hous. v. LeBlanc*, 211 F.3d 298, 304 (5th Cir. 2000) (internal quotations omitted) (quoting *Lujan*, 504 U.S. at 561). It was the City's action of demolishing the named Plaintiffs' homes, allegedly without adequate notice, that led to the continued injury of liens, debt, and an infringement on a legally protected interest. As such, the burdens placed on the named Plaintiffs' property are fairly traceable to the actions of the City.

Under the third requirement of Article III standing, Plaintiffs must show that it is "likely, as opposed to merely speculative, that the injury will be redressed in a favorable decision." *Id.* (quoting *Lujan*, 504 U.S. at 561). In Plaintiffs' Prayer for Relief, they request twelve permanent injunctions directed at remedying the alleged due process violations by the City. Of those twelve requests, seven[11] of the proposed injunctions could likely remedy

---

[11] Specifically, Plaintiffs request permanent injunctions that the City (1) cancel the debt assessed for demolition costs and associated fees/interest and file notice in the public deed record that the debt was cancelled, (2) file a release of the lien in the

the alleged continuing injury and thus provide the requisite Article III redressability for the Process Class.

However, also in their requests for permanent injunctions, the named Plaintiffs have asked for several injunctive remedies that will not redress the particular injuries they allege. The requests by the named Plaintiffs that the City cease demolitions of repairable structures that are owned by African Americans or that are situated in African-American areas, and cease demolitions without adequate notice do not redress their stated injury. Because neither of the named Plaintiffs owns un-demolished property in the City that would be subject to the proposed injunctions, the named Plaintiffs cannot demonstrate that this requested relief will offer them redress. Should the City cease all no-notice demolitions of single-family repairable homes, the named Plaintiffs will not be protected from future injury. Further, the named Plaintiffs have not demonstrated that they will purchase or occupy a repairable single-family home in a black census tract in the near future. *See Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 211 (1995) (requiring an "adequate showing" that Adarand would be involved in the bidding process that implicated the injunctive relief sought). Therefore, these two named Plaintiffs cannot demonstrate that they have standing to request that the City cease future demolitions of repairable structures.

---

public deed records, (3) ensure that title is clear on the property, (4) ensure that all City records concerning the property show the debt cancelled, (5) refrain from taking any steps to enforce the lien or collect the debt, (6) refrain from foreclosures based on demolition liens, and (7) refrain from retaliatory action such as refusing to issue building permits.

In the same manner, these two named Plaintiffs do not have standing to seek the return of money and interest paid for demolition costs, because they have not alleged that they, in fact, paid any money for demolition costs. These named Plaintiffs also do not have standing to request the City set aside all foreclosures based on demolition liens, because neither Plaintiff has alleged that her property was foreclosed upon.

In addition, the named Plaintiffs' request for an injunction granting them clear title to a "comparable replacement home"[12] will not necessarily redress the decrease in value of their properties, which presumably will remain vacant. Plaintiffs are not requesting that the City and HUD rebuild their demolished homes on the particular lots they own – an act that arguably would increase the value of their property. Instead, they are requesting a replacement home somewhere else in the City of Dallas. Unlike the other "continuing injuries" potentially redressed by the sought-after injunctive relief listed in footnote 10 *supra*, the provision of a comparable house does not target the continuing effects of the lack of due process on their properties and, instead, is more properly considered a request for compensatory damages.[13] As the Supreme Court in Lyons recognized, standing to assert a claim for damages to redress past injury

---

[12] Because Plaintiffs did not specify whether this injunctive request runs to the Process Class or to the Race Discrimination Class, we address the request separately for each class.

[13] Our conclusion is based, in part, on the fact that the alleged injury is no more "continuing" than a generic damages action for which it is possible to seek compensatory damages, including past and future pecuniary loss.

may not always give rise to standing for injunctive relief. *See Lyons*, 461 U.S. at 102. Therefore, the named Plaintiffs lack standing for these portions of their Process Class claims.

As such, we conclude that the named Plaintiffs of the Process Class do not have Article III standing to request an injunction to cease demolition of repairable structures owned by African Americans or that are located in predominantly African-American areas or to request comparable housing. The named Plaintiffs do, however, have Article III standing to bring the remainder of their Process Class claims.[14]

B. Standing for Race Discrimination Claims Against the City and HUD

Plaintiffs allege that the City and HUD have engaged in a practice of racially discriminatory housing demolition, the effects of which continue to affect the named Plaintiffs' property. The named Plaintiffs allege that because the City and HUD utilized overt racial categories in the classification of neighborhoods for purposes of conducting demolition-related activities, they can demonstrate ongoing economic injury for the class based on racial discrimination. Specifically, they allege that the effects of this racial discrimination, which has resulted in the demolition of a disproportionate number of single-family houses in minority census districts, continues to perpetuate racial segregation in those neighborhoods, and continues to depreciate the value of their property by

---

[14] *See supra* note 10.

reducing the marketability of those neighborhoods and by discouraging public and private investment.

The City and HUD argue that because the named Plaintiffs do not presently own any un-demolished residential houses in the City subject to future racial discriminatory action by the City or HUD, the named Plaintiffs cannot demonstrate the "likelihood of substantial and immediate irreparable injury," *O'Shea*, 414 U.S. at 502, or a continued effect on their properties. We conclude that because the named Plaintiffs cannot demonstrate that any of their requested relief will redress the alleged injury, these named Plaintiffs do not have Article III standing for the Race Discrimination Class claims. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 105 (1998) (finding that because none of the requested relief would remedy the alleged injury, plaintiffs did not have Article III standing); *see also Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC) Inc.*, 528 U.S. 167, 185 (2000) (recognizing that "a plaintiff must demonstrate standing separately for each form of relief sought").[15]

---

[15] As is evident in the discussions on redressability in *Laidlaw* and *Steel Co.* some difference exists as to the appropriate degree of scrutiny that federal courts must give to the redressability prong of Article III standing. *See Laidlaw*, 528 U.S. at 185; *id.* at 202 (Scalia, J., dissenting); *Steel Co.*, 523 U.S. at 105; *id.* at 124 (Stevens, J., dissenting); *cf. Larson v. Valente*, 456 U.S. 228, 243 n.15 (1982) ("[A] plaintiff satisfies the redressability requirement when he shows that a favorable decision will relieve a discrete injury to himself. He need not show that a favorable decision will relieve his *every* injury."); *Cramer v. Skinner*, 931 F.2d 1020, 1028 (5th Cir. 1991). We make no judgment as to the appropriate degree of scrutiny required to analyze Article III redressability in other cases, but as will be

At the outset, it is important to focus on the precise injury alleged by the named Plaintiffs. In this class action, the named Plaintiffs are not claiming an injury based on past damages due to demolition of their homes, nor are they claiming that they fear imminent demolition of future homes. Instead, these named Plaintiffs allege that the pattern of racial discrimination in housing demolition and enforcement throughout the City has decreased the value of their particular properties and the surrounding neighborhoods and thus demonstrates that a *continuing, present adverse effect* from racial discrimination exists. *See Lyons*, 461 U.S. at 102. In so framing their claim, the named Plaintiffs steer a course between a damages action for which they might have standing, but which would undermine their Rule 23(b)(2) injunctive status, and a pure prospective injunction that would enjoin the City and HUD from demolishing other homes in the future, but that would undermine standing for these named Plaintiffs who do not own other homes in the City.

Despite this careful framing of the issue, on the facts before us, the named Plaintiffs cannot demonstrate that it is "likely" "that the continuing injury will be redressed in a favorable decision." *Lujan*, 504 U.S. at 561; *see also Steel Co.*, 523 U.S. at 105. Our decision turns on the narrowness of the named Plaintiffs' claimed continuing injury, and the broad relief requested that does not address the particular injury suffered by these two Plaintiffs. The named Plaintiffs' requested injunctive relief simply does not

---

discussed *infra* in the text, conclude that none of the injunctions requested by the named Plaintiffs will redress the personal injury claimed by these Plaintiffs.

redress the continuing devaluation of their particular lots of property and neighborhoods because of racially discriminatory demolitions taking place in all parts of the City.[16] *See Steel Co.*, 523 U.S. at 107 ("Relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court; that is the very essence of the redressability requirement.").[17] Because the named Plaintiffs do not allege that they will suffer future injury from the alleged city-wide racially discriminatory demolitions, they are left with a difficult argument of demonstrating how the requested injunctive relief will redress the ongoing economic effects on their already demolished homes and individual pieces of property.

As stated in the previous section, the named Plaintiffs' request for clear title to comparable housing in another part of Dallas will not redress the continuing adverse economic effects on their particular properties or neighborhoods. Because Plaintiffs fail to link their request for replacement housing to how it will redress the injury they have alleged to their particular properties, they cannot demonstrate Article III standing for their request.

---

[16] For the purposes of this opinion, we assume the named Plaintiffs have alleged a sufficiently concrete and personal injury in fact. *See Steel Co.*, 523 U.S. at 105 (assuming injury in fact and deciding the question of standing on redressability).

[17] By framing this injury as a continuing injury and not an imminent future injury, Plaintiffs separate their claim from the history of race discrimination class actions that have sought successfully to enjoin future injury based on alleged race discrimination. *See* Fed. R. Civ. P. 23(b)(2) advisory committee's note (recognizing that Rule 23(b)(2) was intended to be used "in the civil-rights field where a party is charged with discriminating unlawfully against a class").

In addition, the named Plaintiffs also seek an injunction prohibiting the City and HUD from using overt racial stereotypes in the classification of neighborhoods and thus presumably continuing a discriminatory policy and practice traceable to its neighborhood classifications.[18] However, the named Plaintiffs do not demonstrate how prohibiting the use of certain racial classifications will remedy the alleged ongoing economic effects of past racial discrimination on their particular properties. An alteration of the classification system may not have any impact on their property or their neighborhoods. Plaintiffs can only speculate that if the alleged classifications are altered, this will affect future investment, and thereby, their properties or neighborhoods will be improved by the change. Such speculation cannot support Article III standing. *See Lujan*, 504 U.S. at 561.

In a similar manner, Plaintiffs' general request that an injunction be ordered to "eradicate the effects of

---

[18] Plaintiffs do not claim that the racial classification, itself, provides standing for the requested injunctive relief, but seek to tie the racial discrimination to continued effects of the demolition on their properties. We recognize, "[i]n general, the racial classification of the homeowners is an injury in and of itself." *See Walker v. City of Mesquite, Tex.*, 169 F.3d 973, 980 (5th Cir. 1999). In *Allen v. Wright*, the Supreme Court recognized the potential "stigmatizing injury caused by racial discrimination" and stated, "there can be no doubt that this sort of noneconomic injury is one of the most serious consequences of discriminatory government action *and is sufficient in some circumstances to support standing*." 468 U.S. 737, 755 (1984) (emphasis added). Because Plaintiffs have not based their standing argument on this theory, we need not address whether the alleged racial classification, alone, is "sufficient" in this circumstance "to support standing." *Id.*

HUD's discrimination" or to have the district court approve a plan to eliminate the effects of the City and HUD's discrimination is an inappropriate remedy. Plaintiffs have requested that HUD be ordered to remedy "the loss of housing units caused by the HUD funded housing code enforcement and housing code enforcement related demolitions of repairable single family units as well as the resulting blight caused by the loss of housing and households from those areas." This request reveals both the compensatory nature of the proposed prospective relief and the over-broad nature of the remedy. As stated above, if read to require comparable housing, this request is better characterized as a prayer for damages. Further, if read as a sweeping request to generally eradicate the effects of discrimination, the request is not sufficiently targeted to remedy the named Plaintiffs' personal injuries. Cf. *Warth v. Seldin*, 422 U.S. 490, 499 (1975) (recognizing that "a generalized grievance shared in substantially equal measure by all or most citizens" cannot provide standing to request injunctive relief). Again, the named Plaintiffs can only speculate that their properties would be improved by such sweeping relief.

Finally, one of the named Plaintiffs' injunctive requests will have no effect on the alleged injury to their neighborhoods or on the named Plaintiffs' properties. The request for a permanent injunction for HUD to "monitor" the City to determine if it is discriminating on the basis of race will not remedy the continued depreciation in property values in the named Plaintiffs' neighborhood.[19] For the above-stated reasons, the named Plaintiffs

---

[19] Again, while this form of relief might be appropriate to redress alleged future injury from racial discrimination, it does

have not demonstrated that their injuries likely will be redressed by this requested relief, and thus, they have failed to demonstrate Article III standing for the Race Discrimination Class.

C. Summary of Standing

In summary, the two named Plaintiffs, James and Lary, have demonstrated Article III standing for seven[20] of the Process Class requests for injunctive relief. However, because these two named Plaintiffs cannot demonstrate how the remaining five[21] injunctive requests will redress their alleged injuries, they cannot demonstrate Article III standing for these Process Class claims. We remand with instructions to dismiss the Process Class claims for injunctive relief for which the named Plaintiffs do not have standing.

In addition, because none of the requested injunctive relief will redress the named Plaintiffs' Race Discrimination injury, we hold that these named Plaintiffs have failed to demonstrate Article III standing for the Race

---

not redress these named Plaintiffs' particular continuing economic injury.

[20] *See supra* note 10.

[21] Specifically, we hold that these two named Plaintiffs do not have standing to seek injunctive relief on behalf of the Process Class requesting that the City: (1) cease demolitions of repairable structures that are owned by African Americans or are situated in African-American areas; (2) cease demolitions of repairable structures without adequate notice; (3) return money paid with interest for demolition; (4) set aside foreclosures based on demolition liens; and (5) grant the named Plaintiffs clear title to a comparable replacement home.

Discrimination Class. Because the named Plaintiffs have failed to demonstrate Article III standing to bring their Race Discrimination Class claims, we vacate that Class and remand with instructions to dismiss those claims. Further, because the only claims against HUD were based on the Race Discrimination Class, we remand with instructions to dismiss HUD from the lawsuit.

We next address the requirements of Rule 23(b)(2) with regard to the remaining Process Class claims.[22]

V. RULE 23(b)(2)

At the outset, we note that the City's principal arguments in opposition to the proposed Process Class have been mooted by our standing discussion. However, as the City has challenged the Rule 23(b)(2) Process Class certified by the district court and as some claims remain to be asserted by that class, we have an obligation to ensure that the requirements of Rule 23 are met. *See* Fed. R. Civ. P. 23(a) & (b)(2). We hold that the district court did not abuse its discretion in certifying the Process Class against the City; however, as discussed *supra* regarding standing, the named Plaintiffs have Article III standing to seek only seven of their requested injunctions[23] and, thus, can only

---

[22] Because we resolve the class certification issue based on the requirements of Article III standing, we do not address other statutory standing issues that arise in this suit. *See Alexander v. Sandoval*, ___ U.S. ___, 121 S. Ct. 1511 (2001).

[23] *See supra* note 10.

represent a Rule 23(b)(2) class constrained by these jurisdictional requirements. We now turn to analyze the requirements of Rule 23.

A. Rule 23 Requirements

To certify a class with respect to a claim, the district court must find that the putative class meets the four requirements set out in Rule 23(a). *See* Fed. R. Civ. P. 23(a). Rule 23(a) requires that (1) the class be so numerous that joinder of all members is impracticable [numerosity], (2) there be questions of law or fact common to the class [commonality], (3) the claims or defenses of the representative parties be typical of the claims or defenses of the class [typicality], and (4) the representative parties fairly and adequately protect the interests of the class [adequacy]. *See Washington v. CSC Credit Servs., Inc.*, 199 F.3d 263, 265 (5th Cir. 2000) (citing Fed. R. Civ. P. 23(a)).

The court must also find that the class fits within one of the categories of Rule 23(b).[24] *See* Fed. R. Civ. P. 23(b).

---

[24] Rule 23(b) reads in relevant part:

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

Relevant to this appeal, a court may certify a class under Rule 23(b)(2) if "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." *Bolin v. Sears, Roebuck & Co.*, 231 F.3d 970, 975 (5th Cir. 2000) (quoting Fed. R. Civ. P. 23(b)(2)). As *Bolin* recognized, "the Advisory Committee Notes and our cases make clear that injunctive or declaratory relief is not 'appropriate' when the 'final relief relates exclusively or predominantly to money damages.' " *Id.* (quoting Fed. R. Civ. P. 23(b)(2) advisory committee's note); *see also Allison v. Citgo Petroleum Corp.*, 151 F.3d 402, 411 (5th Cir. 1998). Therefore, in bringing their class action under Federal Rule of Civil Procedure 23(b)(2), Plaintiffs must demonstrate that their class action suit seeks

---

> (B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or
>
> (2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or
>
> (3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

Fed. R. Civ. P. 23(b).

predominantly injunctive relief rather than monetary damages. *See Washington*, 199 F.3d at 269. We address each of the requirements of Rule 23 in turn.

1. Rule 23(a): Numerosity

"To satisfy the numerosity prong, 'a plaintiff must ordinarily demonstrate some evidence or reasonable estimate of the number of purported class members.' " *Pederson*, 213 F.3d at 868 (quoting *Zeidman v. J. Ray McDermott & Co.*, 651 F.2d 1030, 1038 (5th Cir. 1981)). The district court found that Plaintiffs presented evidence showing that 580 repairable single-family homes were demolished without adequate notice. Plaintiffs allege that there exist over 100 class members,[25] relying on the estimate of 580 individuals who had their property demolished without adequate notice. We conclude that the district court did not abuse its discretion in finding that there exists a sufficient number of proposed Process Class members to meet this requirement.

2. Rule 23(a): Commonality

To demonstrate commonality, Plaintiffs must allege that there exist "questions of law or fact common to the class." *Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 625 (5th Cir. 1999). "The test for commonality is not demanding." *Id.*; *see also Forbush v. J.C. Penney Co.*, 994 F.2d 1101, 1106 (5th Cir. 1993) ("The threshold of 'commonality' is not high." (citations omitted)). All that is

[25] This general figure is listed in Plaintiffs' Second Amended Complaint and Third Amended Complaint.

required for each class is that there is one common question of law or fact: "The interests and claims of the various plaintiffs need not be identical. Rather, the commonality test is met when there is 'at least one issue whose resolution will affect all or a significant number of the putative class members.' " *Forbush*, 994 F.2d at 1106 (quoting *Stewart v. Winter*, 669 F.2d 328, 335 (5th Cir. 1982)). Therefore, the fact that some of the Plaintiffs may have different claims, or claims that may require some individualized analysis, is not fatal to commonality.

In this case, the members of the Process Class share a common factual circumstance of having their repairable single-family homes demolished without adequate notice of the final demolition order from the City, and a common legal theory that this action by the City violates the Due Process Clause of the Fourteenth Amendment. The theory of liability under 42 U.S.C. § 1983 would be the same for all Plaintiffs. We conclude that the district court did not abuse its discretion in finding sufficient commonality in the Process Class.

3. Rule 23(a): Typicality

In order to meet the typicality requirement, "the claims or defenses of the parties [must be] typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3); *see Mullen*, 186 F.3d at 625. "Like commonality, the test for typicality is not demanding. It focuses on the similarity between the named plaintiffs' legal and remedial theories and the theories of those whom they purport to represent." *Mullen*, 186 F.3d at 625 (citations omitted); *Forbush*, 994 F.2d at 1106. "Typicality does not require a complete

identity of claims. Rather, the critical inquiry is whether the class representative's claims have the same essential characteristics of those of the putative class. If the claims arise from a similar course of conduct and share the same legal theory, factual differences will not defeat typicality." 5 James Wm. Moore Et Al., Moore's Federal Practice ¶ 23.24[4] (3d ed. 2000).

In this case, the named Plaintiffs are African-American property owners who have had their repairable single-family homes demolished without adequate notice, allegedly in violation of due process. Within the Process Class, James apparently represents the class of individuals denied all notice of impending demolitions. Lary represents those who received actual notice of the hearing, but did not receive adequate notice of the final demolition order. Because we determine that the named Plaintiffs' allegations are typical of the class that the named Plaintiffs represent, we hold that the district court did not abuse its discretion in determining the typicality element of the class certification.

4. Rule 23(a): Adequacy

The final requirement of Rule 23(a) is that the district court must find that the "representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "Differences between named plaintiffs and class members render the named plaintiffs inadequate representatives only if those differences create conflicts between the named plaintiffs' interests and the class members' interests." *Mullen*, 186 F.3d at 625-26. The district court found that there was "no conflict of interest

between plaintiffs and the proposed classes." As the City does not contest this finding, we hold that the district court did not abuse its discretion in finding that the named Plaintiffs could adequately represent the members of the Process Class.

B. Rule 23(b)(2): Predominance of Injunctive Relief

"[T]o maintain an action under Rule 23(b)(2), [injunctive] relief rather than monetary damages must be the 'predominant' form of relief the plaintiffs pursue." *Washington*, 199 F.3d at 269. We are guided in our "predominance" analysis by the careful discussion of Rule 23(b)(2) set forth in *Allison v. Citgo Petroleum Corp.* *See* 151 F.3d at 412-15. The *Allison* court recognized that the different presumptions with respect to "class cohesiveness" and "homogeneity of interests" among the members of the Rule 23 (b)(1), (b)(2), and (b)(3) classes necessitate different procedural safeguards for each potential class. *See id.* at 412; *see also Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 612-13 (1997).

In the Rule 23(b)(2) context, "because of the group nature of the harm alleged and the broad character of the relief sought, the (b)(2) class is, by its very nature, assumed to be a homogenous and cohesive group with few conflicting interests among its members." *Allison*, 151 F.3d at 413. The cohesiveness of the class breaks down, however, when the class seeks to recover relief based on individual injuries. *See id.* Further, "as claims for individually based money damages begin to predominate, the presumption of cohesiveness decreases while the need for enhanced procedural safeguards to protect the individual

rights of class members increases." *Id.* The court reasoned:

> [Rule 23](b)(2)'s predomination requirement serves two basic purposes: first, it protects the legitimate interests of potential class members who might wish to pursue their monetary claims individually; and, second, it preserves the legal system's interest in judicial economy.

Id. at 415. Based on this reasoning, the court held that "monetary relief predominates in (b)(2) class actions unless it is incidental to requested injunctive or declaratory relief." *Id.* The *Allison* court explained that "by incidental, we mean damages that flow directly from liability to the class *as a whole* on the claims forming the basis of the injunctive or declaratory relief." *Id.* ("[S]uch damages should at least be capable of computation by means of objective standards and not dependent in any significant way on the intangible, subjective differences of each class member's circumstances.").

In evaluating the proposed relief sought by the named Plaintiffs for which they have Article III standing,[26] we conclude that none of the concerns articulated

---

[26] Because we have concluded that the named Plaintiffs do not have Article III standing to seek "clear title to a comparable replacement single family housing unit," this request does not defeat class certification under Rule 23(b)(2). However, we note that Plaintiffs' request for an injunction to order the City to provide substitute houses would be substantially equivalent to a judgment against the City for damages in the amount necessary to buy substitute houses. *Cf. Jaffee v. United States*, 592 F.2d 712, 715 (3d Cir. 1979) ("A plaintiff cannot transform a claim for damages into an equitable action by asking for an injunction that orders the payment of money.").

in *Allison* bars class certification for the Process Class. As stated, Plaintiffs request the following seven injunctive remedies: that the City (1) cancel the debt assessed for demolition costs and associated fees/interest and file notice in the public deed record that the debt was cancelled, (2) file a release of the lien in the public deed records, (3) ensure that title is clear on the property, (4) ensure that all City records concerning the property show the debt cancelled, (5) refrain from taking any steps to enforce the lien or collect the debt, (6) refrain from foreclosures based on demolition liens, and (7) refrain from retaliatory action such as refusing to issue building permits. This requested relief is consistent with the group-oriented nature of the alleged injury and presents no conflict with the injunctive purposes of Rule 23(b)(2). *See Allison*, 151 F.3d at 415; Fed. R. Civ. P. 23(b)(2) advisory committee's note.

As is evident, much of the requested redress is pure injunctive relief, which does not implicate a concern about monetary damages. Further, whatever monetary cost may run against the City is incidental to the requested injunctive relief of removing the liens and clearing title from the consequences of the allegedly constitutionally deficient no-notice demolitions. These monies "flow directly from the liability to the class as a whole on the claims forming the basis of the injunctive relief," *Bolin*, 231 F.3d at 976, and are, thus, proper under Rule 23(b)(2) to remove the continuing adverse effects of liens and debts on Plaintiffs' property. Finally, there is no concern that "the legitimate interests of potential class members who might wish to pursue their monetary

[damages] claims individually" would be interfered with by this class certification. *See Allison*, 151 F.3d at 415.

Because we determine that the injunctive relief for which the named Plaintiffs have standing predominates over monetary damages, we hold that the district court did not abuse its discretion in certifying the Process Class. Accordingly, we affirm the class certification as modified in this opinion.

VI. CONCLUSION

Because we determine that the named Plaintiffs do not have standing to seek the relief requested for the "Race Discrimination Class," we VACATE the district court's certification of that class and REMAND with instructions to dismiss all the Race Discrimination Class claims against the City and HUD and to dismiss HUD from the lawsuit. Because we determine that the named Plaintiffs do have standing to seek the relief requested for seven of their twelve Process Class claims against the City and we determine further that the district court did not abuse its discretion in certifying the "Process Class," we AFFIRM AS MODIFIED the district court's certification of that class. Finally, because we determine that the named Plaintiffs do not have standing to seek the relief requested for five of their Process Class claims, we REMAND with instructions to dismiss those claims. Costs shall be borne one-half by Plaintiffs and one-half by the City. All pending motions are DENIED.

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS,
DALLAS DIVISION**

**IRMA JEAN JAMES, and TERRI LARY, Plaintiffs,
vs. CITY OF DALLAS, TEXAS, et. al, Defendants.**

CA 3-98-CV-436-R

2000 U.S. Dist. LEXIS 4633

April 11, 2000, Decided

April 11, 2000, Filed, Entered on Docket

COUNSEL:

For IRMA JEAN JAMES, TERRI LARY, plaintiffs: Michael Maury Daniel, Laura Beth Beshara, Attorneys at Law, Law Office of Michael M Daniel, Dallas, TX USA.

For CITY OF DALLAS TEXAS, defendant: Walter C Davis, III, Mark Laurence Bryza, Kenneth Robert Bennett, Attorneys at Law, Dallas City Attorney's Office, Dallas, TX USA.

For HOUSING & URBAN DEVELOPMENT DEPT OF, defendant: William V Cerbone, Jr, Attorney at Law, US Department of Housing & Urban Development, Fort Worth, TX USA.

For HOUSING & URBAN DEVELOPMENT DEPT OF, defendant: Susan L S Ernst, Mary Ann Kilgo, Attorneys at Law, US Attorney's Office, Department of Justice, Dallas, TX USA.

For HOUSING & URBAN DEVELOPMENT DEPT OF, Defendant: Clare Harrigan, Attorney at Law, US Dept of Housing & Urban Development, Washington, DC USA.

JUDGES:

CHIEF JUDGE JERRY BUCHMEYER, UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF TEXAS.

OPINION BY:

JERRY BUCHMEYER

OPINION:

MEMORANDUM OPINION

Plaintiffs are asserting two basic claims against the City, demolition of repairable homes without proper notice in violation of due process and in violation of the fourth amendment prohibition against unreasonable seizures and, second, racial discrimination in the City and HUD's program of federally funded code enforcement demolition of repairable single family homes. Plaintiff are asserting one claim against HUD, racial discrimination in the City and HUD's program of federally funded code enforcement demolition of repairable single family homes.

The purpose of this Opinion is to explain this Court's October 7, 1999 class certification determinations.[1] This Court **GRANTED** Plaintiffs' motion for class certification and certified the following classes:

(1) Process Class: a Rule 23(b)(2) class composed of all property owners who had a repairable single family

---

[1] The class certification determinations were made from the bench at the class certification hearing held October 7, 1999.

structure demolished by the City of Dallas' Urban Rehabilitation Standards Board ("URSB"): (i) and the City demolished the structure without providing the property owner notice of the opportunity to contest the proposed demolition at a hearing prior to the issuance of the order causing the demolition, (ii) and whose structure was demolished without a warrant. This class includes those owners who structures were demolished pursuant to a default demolition order.

(2) Race Discrimination Class: a Rule 23(b)(2) class composed of all persons who share the following characteristics: (i) owners of at least one parcel of real property on which a single family structure was placed, (ii) and which single family structure was a repairable single family structure that was demolished pursuant to a City URSB order, (iii) and either the owner is African-American or the repairable single family unit demolished pursuant to the City URSB order was located in a predominantly black census tract that was 50% or more non-Hispanic black according to the 1990 U.S. census.

This opinion will address, in turn, each of the requirements for class certification under Federal Rule of Civil Procedure 23.

A. Class Certification Standard

Under Federal Rule of Civil Procedure 23(a), a case may proceed as a class action if all of the following characteristics are met: "(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the

claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class." Plaintiffs have moved for certification under rule 23(b)(2), which also requires that "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." As discussed below, plaintiffs have satisfied each of these requirements.

1. FRCP 23(b)(2) Requirement

a. Process Class

The plaintiffs allege that the City failed to give each member of the Process class one or more notices of important procedural events such as the hearing at which the USRB [sic] was going to consider entering a demolition order or the URSB's determination that the homeowner had defaulted on a previous repair order and that demolition would be ordered. The City, as a matter of policy, allegedly refused to obtain a warrant or other judicial process before it seized and demolished each class member's house. The alleged failure to give notice or to obtain a warrant is a failure to act on grounds generally applicable to the class.

b. Race Discrimination Class

Plaintiffs assert that the race of either the occupants of the area in which property is located or the race of the owner of the property is a factor in the decision whether

or not to demolish otherwise repairable single family homes. They introduced both statistical and documentary evidence to support class certification of this claim under 23(b)(2).

Plaintiffs assert that the race of either the occupants of the area in which property is located or the race of the owner of the property is a factor in the decision whether or not to demolish otherwise repairable single family homes. They introduced both statistical and documentary evidence to support class certification of this claim under 23(b)(2).

Plaintiffs' documentary evidence shows that the current pattern of demolitions of repairable single family homes in predominantly black areas is consistent with and traceable to the City's past use of overt racial classifications to determine the treatment accorded to different neighborhoods. The present pattern of single family demolitions continues the targeting of predominantly black neighborhoods begun at the inception of the HUD and City's CDBG code enforcement and demolition program in the mid-1970s. This program was initiated in tandem with the City and HUD's social engineering of neighborhood service delivery based on overt racial classifications at the inception of the CDBG program.

The City of Dallas has a long history of using overt racial classifications of neighborhoods as a basis for a variety of City actions. Throughout the first 50 years of this century, the overt racial classifications were in the City charter and ordinances. *See Liberty Annex Corp. v. City of Dallas*, 289 S.W. 1067, 1069 (Tex. Civ. App. 1926); *Liberty Annex Corp. v. City of Dallas*, 19 S.W.2d 845 (Tex.

Civ. App. 1929); *Walker v. HUD*, 734 F. Supp. 1289, 1294, 1294 n.18 (N.D. Tex. 1989); *Williams v. City of Dallas*, 734 F. Supp. 1317, 1332 n.16 (N.D. Tex. 1990).

A later stage of the overt use of racial classifications to determine the level and kind of municipal services in a neighborhood in Dallas, and federal, urban planning is shown by documents produced in the 1970s.

In 1975, the Real Estate Research Corporation ("RERC") authored for HUD, and HUD distributed, a manual for cities receiving the newly authorized Community Development Block Grant ("CDBG") program funding, "The Dynamics of Neighborhood Change." (*See* Plaintiffs' exhibit 2.)[2] The authors claimed that the purpose of the manual was to help the municipal officials understand the process of neighborhood decline so that they could better counteract the process. (*See* Plaintiffs' exhibit 2 at 1.) The manual presents neighborhood decline as a process in which neighborhoods can be seen as in one of five states. The five states range from "Healthy" to "Abandoned." (*See* Plaintiffs' exhibit 2 at 7-13.) The manual lists a perceptible number of minority group members moving into or nearby a neighborhood as reasons for the decline in the market appeal of a neighborhood and factors, which can cause a 'Healthy' neighborhood to begin the transition to a neighborhood in decline. (*See* Plaintiffs' exhibit 2 at 17.)

There is a chart which lists the characteristics of the various neighborhood types. Healthy neighborhoods

---

[2] HUD continues to make this manual available. (*See* Plaintiffs' exhibit 2 at cover page.)

have the following words or phrases in the neighborhood description: "Middle to High Social Status," "Moderate to Upper Income Levels," and "Ethnic Homogeneity." Incipient Decline neighborhoods have the following words or phrases in the description: "Influx of Middle Income Minorities," "Often Fear of Racial Transition," and "More Renters in Single Family Areas." The Clearly Declining list includes: "Decrease in White Move-ins" and "More Minority Children in Schools." The Accelerating Decline descriptions include "Predominantly Low Income/ Minority Tenants" and "Predominantly Minority Children in Schools." (*See* Plaintiffs' exhibit 2 Fig. 2.) The text provides more detail on the meaning of the phrases in the chart. (*See* Plaintiffs' exhibit 2 at 23-30.)

"Residents of a healthy neighborhood are generally homogeneous – much like one another in terms of race, income, status, education and job. While this usually means that residents are predominantly white, with middle to high incomes, there are many moderate income 'working class' neighborhoods that are perfectly sound. There are also some examples of neighborhoods that are totally or predominantly minority group that are 'healthy.' " . . . "When people with characteristics as described above decide and continue to live in a particular neighborhood, its stability is virtually assured." (Plaintiffs' exhibit 2 at 23-24.)

"The people moving into a neighborhood in the incipient decline stage differ from the people moving out. . . . Sometimes the new residents are different racially or ethnically from the old residents. The old residents may become fearful of racial transition and less confident of the neighborhoods' [sic] future. . . . If the

type of families living in a healthy neighborhood decide to leave and are not replaced by families of the same type, neighborhood decline begins." (Plaintiffs' exhibit 2 at 24-25.)

"Migration of low-income groups and minorities to urban areas and the perceived decline in the quality of urban life reduces the desirability of living in urban neighborhoods generally. Activities in adjacent areas, such as the building of a freeway, a hospital or low/moderate income housing also change a neighborhood's ability to attract residents." (Plaintiffs' exhibit 2 at 26.)

The description of Clearly Declining neighborhoods includes: "Residents may be racially mixed with increasing numbers of minority homeowners as well as low-income minority tenants." (Plaintiffs' exhibit 2 at 26.) "The exodus of white households increases as does absentee ownership. . . . A 'clearly declining' neighborhood is particularly sensitive to rapid racial changes in nearby neighborhoods, increasing minority children in the schools. . . . "Public agencies recognize housing opportunities for welfare recipients and begin to make placements in the neighborhood. They may also sponsor low-income housing in the neighborhood." (Plaintiffs' exhibit 2 at 26-28.)

"Residents of a neighborhood in 'accelerating decline' are almost all low-income minority tenants. . . . Owners are predominantly absentee whites who have little contact with their tenants. . . . The only people who are coming into the neighborhood are poor people of minority groups." (Plaintiffs' exhibit 2 at 28-29.)

HUD also adapted and promulgated a simpler version of the RERC neighborhood classification scheme which included the use of racial classifications to determine the viability of a neighborhood. The simpler version used the increase in minority persons as a factor in rating a neighborhood as one in either "Clear Decline" or "Heavy Decline." (*See* Plaintiffs' exhibit 3 at 1, 267-268.) HUD recommended the use of this scheme in the planning and evaluation of neighborhood revitalization programs. (*See* Plaintiffs' exhibit 3 at 1, 267-268.)

Both of these racial classification schemes are still distributed by HUD (*See* Plaintiffs' exhibit 2 at cover page; Plaintiffs' exhibit 3 at cover page.)

The City of Dallas began to receive CDBG funds in 1975. The City, at the same time, began a comprehensive housing and neighborhood strategy planning process. The City's planning process used the same neighborhood dynamics theories, concepts, and categories expressed in the HUD/RERC study. The process culminated in the City's 1978 Housing Plan.

The City's director of the Department of Housing and Urban Rehabilitation helped lead a local committee which accepted the same equivalence of minority residents and a substandard neighborhood found in the RERC study. The study was the May 1975 "How to Measure Neighborhood Decline" study published by the Center for Urban and Environmental Studies, Southern Methodist University. (*See* Plaintiffs' exhibit 1.) The study was conducted by a steering committee made up of HUD, state and local housing officials, private developers, and other housing related persons. The purpose of the study

was to formulate specific indicators of neighborhood decline that could be used for City planning and policy implementation purposes. One of the indicators of potential neighborhood decline identified by the study was "High ratio of minority ethnic and racial population." (Plaintiffs' exhibit 1 at 33.) This indicator was overtly converted to a proxy measure, "Number of persons receiving public assistance." (Plaintiffs' exhibit 1 Table I.)

The same racial assumption that a high percent of black or other minority residents was a sign of neighborhood decline into a substandard condition became a basis for the City's 1978 Housing Plan for the City of Dallas. The other racial premises were explicitly incorporated into the framework for the Housing Plan.

The 1978 Housing Plan was based on the 1977 "Proposed Housing Plan" prepared by the Urban Land Institute, a consultant named Marshall Kaplan, and an interdepartmental City staff team headed by the same Richard H. Wilson who represented the City in the SMU neighborhood decline study. (*See* Plaintiffs' exhibit 4.) The Proposed Plan explicitly identified minority racial status as a sign of emerging neighborhood instability. Neighborhoods are identified as "likely candidates for future problems" because of "their location near or contiguous to areas of concentrated and/or pent up minority demand." (Plaintiffs' exhibit 4 at 168.) The proposal also stated, "The problem is not legitimacy of the minority demand, but what occurs when it is able to express itself because of circumstance (income, discrimination, etc.) only in contiguous areas. Rapid increase in minority residence usually occurs when an area is already not favored by many

white residents and has already illustrated signs of obsolescence as well as deterioration. Rapid change generates difficulties with respect to maintenance of values, financing, etc." (Plaintiffs' exhibit 4 at 168 n.1.)

The proposed plan identified the increasing minority percentage of the City's population as a problem to be addressed by the Housing Plan. (*See* Plaintiffs' exhibit 4 at viii.) The plan cautioned that increasing minority demand for home ownership units, given stable white demand, would create market pressures which, if not responded to, would lead to the conversion of neighborhoods to all minority neighborhoods. (*See* Plaintiffs' exhibit 4 at iv, 72.)

The proposed plan identified the City's share of the region's minority persons as a problem which prevented the retention of middle class persons and the revitalization of neighborhoods. (*See* Plaintiffs' exhibit 4 at ix.)

The proposed plan used neighborhood revitalization to retain existing and attract new moderate/middle income, white families. (*See* Plaintiffs' exhibit 4 at 169.) Filtering down, rather than revitalization, would be used to provide housing for minorities and low income persons.

The proposed plan, as part of its purpose to retain white, middle class persons, proposed a strict limit on the City's efforts to assist housing for minorities and low income persons. (*See* Plaintiffs' exhibit 4 at 177.) The plan proposed reducing minority pressure on white neighborhoods by " 'in place' rehabilitation efforts and the opening up of housing opportunities throughout the area." (*See* Plaintiffs' exhibit 4 at 177 n.1.)

The Housing Plan adopted by the City Council was based on the race conscious elements of the proposed Housing Plan and implemented the proposed emphasis on limiting housing for poor persons and seeking to attract and retain the middle class. (*See* Plaintiffs' exhibit 6 1978 council resolution.) The Plan did not include any element that would have increased housing opportunities for African-American households, but did institute a ban on the City's acceptance of more than its definition of its fair share of low income persons and housing for those persons. The Housing Plan was made an explicit part of the City's HUD required, CDBG Housing Assistance Plan. (*See* Plaintiffs' exhibit 7 at 3-6.)

At the same time the City was doing its race-based housing planning, it was also beginning its use of code-enforcement demolition of single family houses on a large scale. Because the demolition was funded by HUD CDBG funds, the City did an Environmental Impact Study ("EIS") of its demolition plans. The 1977 EIS was based on a study and recommendations done by RERC. (*See* Plaintiffs' exhibit 5.) RERC is the same group that did the "Dynamics of Neighborhood Change" racial neighborhood classification scheme for HUD. (*See* Plaintiffs' exhibit 2.) The EIS makes it clear that the predominantly black neighborhoods of the City are the ones to be targeted for federally funded code enforcement demolition.

The "Low Income" part of the demolition target area was 92.2% black and included 17.7% of the City's black population. The "Moderate Income" part of the demolition target area was 59.9% black and included 63.8% of the City's black population. The combined "Low and Moderate" income areas targeted for the City's future

demolition activity were 64.7% black and included 81.5% of the City's black population. At the time, the City was 24.9% black. (*See* Plaintiffs' exhibit 5 at 045.) The target areas are the same predominantly black areas in which the City continues to use the code enforcement process to demolish a disproportionate number of repairable single family homes.

The City's plan was to minimize or diminish the demolition rate in non-black communities such as East Dallas (*See* Plaintiffs' exhibit 5 at 114, 150) and Oak Lawn (*See* Plaintiffs' exhibit 5 at 88, 132). The City intended to increase the rate of demolitions in the predominantly black communities of West Dallas (*See* Plaintiffs' exhibit 5 at 78, 126), Trinity (*See* Plaintiffs' exhibit 5 at 98, 138), Lisbon (*See* Plaintiffs' exhibit 5 at 103, 142), and South Dallas (*See* Plaintiffs' exhibit 5 at 108, 144). For example, the City intended to demolish 1,476 single family units in South Dallas from 1976 to 1980. (*See* Plaintiffs' exhibit 5 at 144-145.)

The EIS noted that one of the impacts of the demolition in the adjoining communities could be to cause the lower income households, forced to relocate, to move to the Lakewood community by taking advantage of any less expensive, because less well maintained, rental housing. The Lakewood community was defined as "predominantly white" and "viable." The EIS suggested future public intervention to prevent the decline in housing stock. (*See* Plaintiffs' exhibit 5 at 117, 121.)

The City's CDBG funded demolition activity was found by HUD to have resulted in the demolition of repairable housing in 1989, 1990, and 1991. (*See* Plaintiffs'

exhibit 9.) HUD required the City to produce replacement units. (*See* Plaintiffs' exhibit 10.) The City continued to use HUD CDBG funds for code enforcement through 1997. (*See* Plaintiffs' exhibit 16.)

The City continues to classify predominantly African-American neighborhoods as inherently unstable and not worthy of protection from decline. The most recent expression of this classification is in the 1993 "City of Dallas Comprehensive Neighborhood Revitalization Strategies." (Plaintiffs' exhibit 11.) There are five classifications for each City neighborhood. Types 1 and 2 are "healthy/stable/self sustaining neighborhoods." Neighborhood type 3 is "healthy/endangered declining neighborhoods with pockets of blight." Type 4 is "advanced decline" and type 5 is "advanced decline and abandonment." (*See* Plaintiffs' exhibit 11 at 5-9.) Neighborhoods classified 1 and 2 receive flexible planning and focused services to prevent "community degradation." The resources applied to these areas include the Capital Improvement Budget, bond programs, and the General Fund Budget. Classification 3 neighborhoods receive neighborhood revitalization programs. These programs are designed to provide comprehensive neighborhood revitalization to prevent "pockets of blight" from endangering healthy neighborhoods. The resources applied are CDBG, HOME, other federal funds, and the General Fund Budget. The remaining neighborhoods, those classified 4 and 5 with the exception of those protected by the Walker consent decree, are designated as "Neighborhood Redevelopment Areas." These neighborhoods are to receive City acquisition of slum and blighted areas, demolition and removal of buildings and improvements,

and development of the resulting vacant land for "predominantly residential uses to activate sound community growth." The resources for these programs are listed as "to be determined."

The characteristics used to rank each neighborhood include a wide range of demographic characteristics. There are some obvious factors used such as percent owner occupied and median household income. The use of these characteristics alone would produce a racially skewed distribution of predominantly white areas in the healthy/stable/self sustaining neighborhoods classified as types 1 and 2. In 1994, black occupied unit median income was $20,811, only 70% of the Dallas median income. While the City's homeowner rate was 43% of all occupied units, just 35% of black occupied units were owner occupied. (*See* Plaintiffs' exhibit 27; HUD/U.S. Census American Housing Survey, Dallas, TX 1994 tables.)

The City's scheme adds an additional demographic characteristic, which is even more discriminatory and much less obvious as an indicator of neighborhood viability. The City scheme also includes "Large percentage of female headed households with no spouse present" as an indicator of neighborhood quality and a determinant of the level and type of municipal services to be provided. Fifty two percent (52%) of all black occupied units in the City of Dallas are female headed households. Only 35% of all occupied units in the City are female headed households and only 30% of the non-black occupied units in the City are female headed households. (*See* Plaintiffs' exhibit 27.) This explicit gender classification is also racially discriminatory. The female headed household criterion was

also used in the explicit race based neighborhood classification scheme developed by HUD and City officials in 1975. (*See* Plaintiffs' exhibit 1 at 33.)

The discriminatory effect of this scheme is shown by the racial demographics of the census tracts classified in the document. (*See* Plaintiffs' exhibit 11 at 21-24.) There are no type 1 neighborhoods listed. There are 20 type 2, "healthy/stable/self sustaining," neighborhoods. Only two are more than 50% black, while 7 are more than 50% white. There are 20 type 3, "healthy/endangered declining neighborhoods with pockets of blight," neighborhoods. There are no majority white endangered declining neighborhoods. There are 11 majority black neighborhoods and nine majority Hispanic neighborhoods. There are 19 type 4 and 5, advanced decline" and "advanced decline and abandonment," neighborhoods. There are no majority white advanced decline or abandoned neighborhoods. The highest percentage white of any such area is census tract 16, 20.43% non-Hispanic white. There are 13 majority black advanced decline or abandoned neighborhoods and 3 such majority Hispanic neighborhoods. (*See* Plaintiffs' exhibit 28.) The City's classification scheme continues the identification of the presence of racial minorities with the appellation of a declining neighborhood used in the earlier overtly race conscious classifications.

The City continues to implement other aspects of the race based municipal services and housing plan developed during the 1970s. In 1995, the City lobbied against a HUD regulation that would have required the federal secondary mortgage market corporations, FANNIE MAE and FREDDIE MAC, to direct more resources to home

ownership in the low and moderate income areas of the central City. One reason for the City's opposition was that "even though we support any initiative to assist our low and moderate income census tracts, Dallas, as with many other central cities, is fighting a desperate battle to both retain middle-income residents and bring back more middle-income residents to the central City. As proposed by HUD, this regulation would effectively remove a powerful tool to keep and recruit these residents." (Plaintiffs' exhibit 14.) This is the same concern expressed in the explicitly race conscious 1977 City housing planning. (*See* Plaintiffs' exhibit 4 at 169, 177.)

HUD continues to approve the City's use of racial classifications to determine the treatment of a neighborhood. A fair housing complaint, alleging that the City of Dallas code enforcement and demolition process was racially discriminatory against blacks, was filed with HUD in 1994. The complaint was amended in 1996 to add the Dallas Branch NAACP as a complainant. HUD dismissed the complaint in 1997 on the grounds that reasonable cause did not exist to believe that a discriminatory housing practice had occurred. The HUD dismissal of the complaint was based, in part, on the following City defenses and HUD fact findings:

"The City claimed that a consent decree in the Walker case restricts the City in providing low income housing in minority concentrated neighbors (sic)." (Plaintiffs' exhibit 12 "Determination of No Reasonable Cause" at 2.)

"The investigation revealed that from January 1, 1993 to December 31, 1994, the City of Dallas demolished 958 structures using City Forces. This number does not

include structures that were demolished by the owners. Of this number, 710 or 74% were located in census tracts where over 50% of the residents were Black; 162 or 17% were located in census tracts where over 50% of the residents were Hispanic; 73 or 8% were located in census tracts where over 50% of the residents were White; and 13 were located in census tracts where none of the races represented over 50% of the population." (Plaintiffs' exhibit 12 "Determination of No Reasonable Cause" at 2-3.)

"The investigation revealed that the Consent Decree in the Debra Walker, et al. v. The U.S. Department of Housing and Urban Development, et al. states that the City shall provide additional standard housing and the units shall be located in non-minority concentrated areas of the City." (Plaintiffs' exhibit 12 "Determination of No Reasonable Cause" at 3.) This same unwillingness to create additional housing in minority areas was part of the 1970s City planning effort to stem the increase of black residents and to attract more white residents. (*See* Plaintiffs' exhibit 4 at 169, 177.)

Of course, the Walker consent decree does not condone the conduct of restricting the creation of housing or causing the demolition of housing in areas classified as "minority." That decree does require the creation of housing in white areas, but it also requires the creation of approximately 1,600 additional low-income units in minority concentrated areas.

In addition, the City shall administer federally funded programs directed toward providing additional standard low income housing in minority concentrated

areas of the City for persons eligible for low rent public housing, on terms substantially equivalent to the terms on which public housing is available. Such programs currently include the Revolving Loan Fund, the Dallas Apartment Repair Program, and the Rental Rehabilitation Program. It is anticipated that such programs will provide approximately 1600 such housing units.

(Plaintiffs' exhibit 13 at 6.)

The City's unwillingness to create additional units in minority classified areas as a remedy for disproportionate demolition in those areas cannot be justified by the Walker decree. HUD's ratification of the City's unwillingness to remedy disproportionate demolitions by creating additional units in minority classified areas cannot be justified by the Walker decree.

The results of the City's single family demolition program also support (b)(2) class certification on the basis that the City has acted on grounds generally applicable to the class, race.

Plaintiffs introduced the results of their analysis of the URSB single family cases, which were given "FINAL" status by the City during the period 1992-1996. The key subject of the analysis was the fate of the cases in which the house was repairable as used in the class definition.

The results show a significant disparity in the treatment given to repairable single family homes between property located in predominantly black census tracts and property located in predominantly white tracts. The demolition rate for repairable single family homes in 90% plus black census tracts is 50.6%, over three times the rate

for similar homes in 90% plus white areas, 14.9%. Thirty one percent of the repairable single family homes in 90% plus black tracts were demolished without adequate notice. Only 6% of such homes were demolished without adequate notice in 90% plus white areas. (*See* Plaintiffs' exhibit 17.) These and the other statistics presented by plaintiffs support the finding that the City has acted on grounds generally applicable to the class members, their race. (*See* Plaintiffs' exhibits 17-24.)

The Defendants attack Plaintiffs' definition of "repairable." The term "repairable" in the definition of the classes and in Plaintiffs' numerical analysis means a single family house that meets at least one of the following criteria:

a) the estimated or actual costs of repairs was equal to or less than the property tax assessed value of the structure or equal to or less than actual market value,

b) there is no certification in the URSB file that the structure is non-repairable,

c) the City code enforcement URSB referral recommends that the URSB order repairs,

d) the URSB staff recommendation to the URSB is that the URSB order repairs, or

e) the URSB ordered repairs to the structure.

Plaintiffs' definition is objective, easily determined from the City's own documents in each case, and uses the City staff or URSB's own recommendations or determinations as the usual basis for a "repairable" determination. Plaintiffs' definition of "repairable" may be more favorable to the City than the application of the official City

policy for the use of demolition. That policy was adopted in 1991 in City Council resolution 911339. (*See* Plaintiffs' exhibit 8.) One purpose of the policy was to ensure that City housing programs "are applied in a just and fair manner. . . . " (Plaintiffs' exhibit 8 at 9.) The policy limits the use of demolition to cases "when all other compliance tools, such as housing assistance programs, Chapter 54, In Rem and receivership are exhausted and when properties create an urban nuisance and meet one of the following conditions (unless there is donated support for repair): a) more than 50 percent burned, or b) has major structural decay of several components that affect the integrity of the building (foundation, roof, complete rewiring, total replacement of plumbing)." (Plaintiffs' exhibit 8 at 10.) If Plaintiffs' evidence is correct, the City has demolished many structures which do not meet these criteria.

Plaintiffs' definition is similar to the definition used by HUD earlier this decade when it required the City to replace repairable housing units demolished in violation of HUD's CDBG standards. HUD's regulation required the replacement of all demolished units that were suitable for rehabilitation. That determination was also to be based on the City's own inspections and conclusions about repairability. (*See* Plaintiffs' exhibit 9 at 3.)

Plaintiffs' definition of repairability is adequate for purposes of class certification. It eliminates properties that were clearly suitable for demolition from the case. Their definition uses the City's own determinations as the basis for the repairable or not classification. It provides a clear line between those in the class and those excluded.

2. FRCP 23(a) Requirements

a. Numerosity

Plaintiffs presented evidence showing that 580 repairable single family homes were demolished without adequate notice. (*See* Plaintiffs' exhibits 17, 18, 25.) Each of these homes was also seized and demolished without a warrant or other judicial process. The numerosity requirement is satisfied for the process class.

Plaintiffs presented evidence showing that 764 repairable single family homes in predominantly black census tracts were demolished and became "Final" URSB cases during the years 1992-1996. (*See* Plaintiffs' exhibits 17-18, 26.) Some of the homes were owned by individuals or institutions that will probably not meet the class definition, e.g. the City of Dallas, banks and large scale landlords. (*See* Plaintiffs' exhibit 26.) However, the exclusion of these property owners from the class does not defeat the showing of numerosity for the race discrimination class.

b. Commonality

The questions of law and fact discussed above under the 23(b)(2) issue are questions of law and fact common to each member of the proposed classes.

c. Typicality

Each of the named plaintiffs was denied notice of one or more important procedural stages of the URSB case involving their property. Both of their single family homes met the criteria for repairability. (*See* Plaintiffs'

exhibits 29, 30.) Ms. James was not given notice of any of the proceedings. The City mailed her notices to an apparently non-existent address. (*See* Plaintiffs' exhibit 29.) Ms. Lary was present at the URSB hearing and received notice of the URSB order to repair her property or demolish it. Although, Ms. Lary repaired her property, the City declared her in default of the repair order and ordered demolition. The notice of default which would have given her the opportunity to show that she had in fact made the repairs was sent to the wrong address even though the City had the correct address in its possession. (*See* Plaintiffs' exhibit 30.) The City did not obtain a warrant or other judicial process before seizing and demolishing the named Plaintiffs' repairable single family homes. Ms. James and Ms. Lary are African-American and the demolished homes were located in predominantly black census tracts. (*See* Plaintiffs' exhibits 29, 30.)

d. Adequacy of representation

There is no conflict of interest between plaintiffs and the proposed classes. In order to recover on their claims, the plaintiffs must prove the same facts as are necessary for the class recovery. Although plaintiffs are also seeking individual damages as an alternative remedy, this does not disqualify them from class representation. *See Stewart v. Winter*, 669 F.2d 328, 334-335 (5th Cir. 1982). The plaintiffs are also seeking the alternative relief for the class members. (*See* Plaintiffs' Second Amended Complaint at 13.)

B. Limits of Opinion

The findings of fact contained within this opinion are limited to class certification. Indeed, liability remains an issue for the ultimate fact finder at trial.[3]

C. Conclusion

For the reasons stated in this Opinion, Plaintiffs' motion for class certification was **GRANTED** and the Court certified two classes, as defined above. Plaintiffs' attorneys shall submit a class certification order pursuant to this opinion.

It is so **ORDERED.**

ENTERED: April 11, 2000.

CHIEF JUDGE JERRY BUCHMEYER

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS

---

[3] This should alleviate the concerns of HUD and the City.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IRMA JEAN JAMES, and TERRI LARY, Plaintiffs v. THE CITY OF DALLAS, et al, Defendants	CIVIL ACTION NO. 3-98CV-0436-R CLASS ACTION (Filed Aug. 18, 2000)

ORDER CERTIFYING CLASSES

The following classes are conditionally certified pursuant to Fed. R. Civ. P. 23.

(1) *Process class:* a Rule 23 (b) (2) class composed of all property owners who had a repairable single family structure demolished by the City of Dallas' Urban Rehabilitation Standards Board ("URSB"): (i) and the City demolished the structure without providing the property owner notice of the opportunity to contest the proposed demolition at a hearing prior to the issuance of the order causing the demolition, (ii) and whose structure was demolished without a warrant. This class includes those owners who [sic] structures were demolished pursuant to a default demolition order.

(2) *Race Discrimination Class:* a Rule 23 (b) (2) class composed of all persons who share the following characteristics: (i) owners of at least one parcel of real property on which a single family structure was placed, (ii) and which single family structure was a

repairable single family structure that was demolished pursuant to a City URSB order, (iii) and either the owner is African-American or the repairable single family unit demolished pursuant to the City URSB order was located in a predominantly black census tract that was 50% or more non-Hispanic black according to the 1990 U.S. census.

8/17/00
Date

/s/ Jerry Buchmeyer
CHIEF JUDGE
JERRY BUCHMEYER
UNITED STATES
DISTRICT COURT
NORTHERN DISTRICT
OF TEXAS

CONSTITUTION OF THE UNITED STATES OF AMERICA

USCS Const. Amend. 4 (2001)

Unreasonable searches and seizures.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

USCS Const. Amend. 5 (2001)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

USCS Const. Amend. 14, § 1 (2001)

Sec. 1. [Citizens of the United States.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

TITLE 42. THE PUBLIC HEALTH AND WELFARE

CHAPTER 21. CIVIL RIGHTS

GENERALLY

42 USCS § 1981 (2001)

§ 1981. Equal rights under the law

(a) Statement of equal rights. All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined. For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) Protection against impairment. The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

TITLE 42. THE PUBLIC HEALTH AND WELFARE

CHAPTER 21. CIVIL RIGHTS

GENERALLY

42 USCS § 1983 (2001)

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

TITLE 42. THE PUBLIC HEALTH AND WELFARE

CHAPTER 21. CIVIL RIGHTS

FEDERALLY ASSISTED PROGRAMS

42 USCS § 2000d (2001)

§ 2000d. Prohibition against exclusion from participation in, denial of benefits of, and discrimination under federally assisted programs on ground of race, color, or national origin

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

TITLE 42. THE PUBLIC HEALTH AND WELFARE

CHAPTER 45. FAIR HOUSING

GENERALLY

42 USCS § 3604 (2001)

§ 3604. Discrimination in the sale or rental of housing and other prohibited practices.

As made applicable by section 803 [42 USCS § 3603] and except as exempted by sections 803(b) and 807 [42 USCS §§ 3603(b), 3607], it shall be unlawful –

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to

any person because of race, color, religion, sex, familial status, or national origin.

TITLE 42. THE PUBLIC HEALTH AND WELFARE

CHAPTER 45. FAIR HOUSING

GENERALLY

42 USCS § 3608 (2001)

§ 3608. Administration

(a) Authority and responsibility. The authority and responsibility for administering this Act shall be in the Secretary of Housing and Urban Development.

(b) Assistant Secretary. The Department of Housing and Urban Development shall be provided an additional Assistant Secretary.

(c) Delegation of authority; appointment of hearing examiners; location of conciliation meetings; administrative review. The Secretary may delegate any of his functions, duties, and powers to employees of the Department of Housing and Urban Development or to boards of such employees, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to work, business, or matter under this title. The persons to whom such delegations are made with respect to hearing functions, duties, and powers shall be appointed and shall serve in the Department of Housing and Urban

Development in compliance with sections 3105, 3344, 5372, and 7521 of title 5 of the United States Code. Insofar as possible, conciliation meetings shall be held in the cities or other localities where the discriminatory housing practices allegedly occurred. The Secretary shall by rule prescribe such rights of appeal from the decisions of his hearing examiners to other hearing examiners or to other officers in the Department, to boards of officers or to himself, as shall be appropriate and in accordance with law.

(d) Cooperation of Secretary and executive departments and agencies in administration of housing and urban development programs and activities to further fair housing purposes. All executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of this title and shall cooperate with the Secretary to further such purposes.

(e) Functions of Secretary. The Secretary of Housing and Urban Development shall –

(1) make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural, throughout the United States;

(2) publish and disseminate reports, recommendations, and information derived from such studies, including an annual report to the Congress –

(A) specifying the nature and extent of progress made nationally in eliminating discriminatory housing practices and furthering the purposes of this title, obstacles remaining to achieving equal housing opportunity, and recommendations for further legislative or executive action; and

(B) containing tabulations of the number of instances (and the reasons therefor) in the preceding year in which –

(i) investigations are not completed as required by section 810(a)(1)(B) [42 USCS § 3610(a)(1)(B)];

(ii) determinations are not made within the time specified in section 810(g) [42 USCS § 3610(g)]; and

(iii) hearings are not commenced or findings and conclusions are not made as required by section 812(g) [42 USCS § 3612(g)]

(3) cooperate with and render technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(4) cooperate with and render such technical and other assistance to the Community Relations Service as may be appropriate to further its activities in preventing or eliminating discriminatory housing practices;

(5) administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this title; and

(6) annually report to the Congress, and make available to the public, data on the race, color, religion, sex, national origin, age, handicap, and family characteristics of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries of, programs administered by the Department to the extent such characteristics are within the coverage of the provisions of law and Executive orders referred to in subsection (f) which apply to such programs (and in order to develop the data to be included and made available to the public under this subsection, the Secretary shall, without regard to any other provision of law, collect such information relating to those characteristics as the Secretary determines to be necessary or appropriate).

TITLE 42. THE PUBLIC HEALTH AND WELFARE

CHAPTER 45. FAIR HOUSING

GENERALLY

42 USCS § 3613 (2001)

§ 3613. Enforcement by private persons

(a) Civil action.

(1) (A) An aggrieved person may commence a civil action in an appropriate United States district court or State court not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this title, whichever occurs last, to obtain

appropriate relief with respect to such discriminatory housing practice or breach.

(B) The computation of such 2-year period shall not include any time during which an administrative proceeding under this title was pending with respect to a complaint or charge under this title based upon such discriminatory housing practice. This subparagraph does not apply to actions arising from a breach of a conciliation agreement.

(2) An aggrieved person may commence a civil action under this subsection whether or not a complaint has been filed under section 810(a) [42 USCS § 3610(a)] and without regard to the status of any such complaint, but if the Secretary or a State or local agency has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this subsection by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing the terms of such an agreement.

(3) An aggrieved person may not commence a civil action under this subsection with respect to an alleged discriminatory housing practice which forms the basis of a charge issued by the Secretary if an administrative law judge has commenced a hearing on the record under this title with respect to such charge.

(b) Appointment of attorney by court. Upon application by a person alleging a discriminatory housing practice or a person against whom such a practice is alleged, the court may –

(1) appoint an attorney for such person; or

(2) authorize the commencement or continuation of a civil action under subsection (a) without the payment of fees, costs, or security, if in the opinion of the court such person is financially unable to bear the costs of such action.

(c) Relief which may be granted.

(1) In a civil action under subsection (a), if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff actual and punitive damages, and subject to subsection (d), may grant as relief, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order (including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate).

(2) In a civil action under subsection (a), the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the same extent as a private person.

(d) Effect on certain sales, encumbrances, and rentals. Relief granted under this section shall not affect any contract, sale, encumbrance, or lease consummated before the granting of such relief and involving a bona fide purchaser, encumbrancer, or tenant, without actual notice of the filing of a complaint with the Secretary or civil action under this title.

(e) Intervention by Attorney General. Upon timely application, the Attorney General may intervene in such civil action, if the Attorney General certifies that the case is of general public importance. Upon such intervention the Attorney General may obtain such relief as would be available to the Attorney General under section 814(e) [42 USCS § 3614(e)] in a civil action to which such section applies.

TITLE 42. THE PUBLIC HEALTH AND WELFARE

CHAPTER 69. COMMUNITY DEVELOPMENT

42 USCS § 5301 (2001)

§ 5301. Congressional findings and declaration of purpose

(a) Critical social, economic, and environmental problems facing Nation's urban communities. The Congress finds and declares that the Nation's cities, towns, and smaller urban communities face critical social, economic, and environmental problems arising in significant measure from –

(1) the growth of population in metropolitan and other urban areas, and the concentration of persons of lower income in central cities;

(2) inadequate public and private investment and reinvestment in housing and other physical facilities, and related public and social services, resulting in the growth and persistence of urban slums and blight and the

marked deterioration of the quality of the urban environment; and

(3) increasing energy costs which have seriously undermined the quality and overall effectiveness of local community and housing development activities.

(b) Establishment and maintenance of viable urban communities; systematic and sustained action by Federal, State, and local governments; expansion of and continuity in Federal assistance; increased private investment; streamlining programs and improvement of functioning of agencies. The Congress further finds and declares that the future welfare of the Nation and the well-being of its citizens depend on the establishment and maintenance of viable urban communities as social, economic, and political entities, and require –

(1) systematic and sustained action by Federal, State, and local governments to eliminate blight, to conserve and renew older urban areas, to improve the living environment of low- and moderate-income families, and to develop new centers of population growth and economic activity;

(2) substantial expansion of and greater continuity in the scope and level of Federal assistance, together with increased private investment in support of community development activities;

TITLE 42. THE PUBLIC HEALTH AND WELFARE

CHAPTER 69. COMMUNITY DEVELOPMENT

42 USCS § 5304 (2001)

§ 5304. Statement of activities and review

(a) Application; contents; statements of assurances.

(1) Prior to the receipt in any fiscal year of a grant under section 106(b) [42 USCS § 5306(b)] by any metropolitan city or urban county, under section 106(d) [42 USCS § 5306(d)] by any State, or under section 106(d)(2)(B) [42 USCS § 5306(d)(2)(B)] by any unit of general local government, the grantee shall have prepared a final statement of community development objectives and projected use of funds and shall have provided the Secretary with the certifications required in subsection (b) and, where appropriate, subsection (c). In the case of metropolitan cities and urban counties receiving grants pursuant to section 106(b) [42 USCS § 5306(b)] and in the case of units of general local government receiving grants pursuant to section 106(d)(2)(B) [42 USCS § 5306(d)(2)(B)], the statement of projected use of funds shall consist of proposed community development activities. In the case of States receiving grants pursuant to section 106(d) [42 USCS § 5306(d)], the statement of projected use of funds shall consist of the method by which the States will distribute funds to units of general local government.

(2) In order to permit public examination and appraisal of such statements, to enhance the public accountability of grantees, and to facilitate coordination

of activities with different levels of government, the grantee shall in a timely manner –

(A) furnish citizens or, as appropriate, units of general local government information concerning the amount of funds available for proposed community development and housing activities and the range of activities that may be undertaken, including the estimated amount proposed to be used for activities that will benefit persons of low and moderate income and the plans of the grantee for minimizing displacement of persons as a result of activities assisted with such funds and to assist persons actually displaced as a result of such activities;

(B) publish a proposed statement in such manner to afford affected citizens or, as appropriate, units of general local government an opportunity to examine its content and to submit comments on the proposed statement and on the community development performance of the grantee;

(C) hold one or more public hearings to obtain the views of citizens on community development and housing needs;

(D) provide citizens or, as appropriate, units of general local government with reasonable access to records regarding the past use of funds received under section 106 [42 USCS § 5306] by the grantee; and

(E) provide citizens or, as appropriate, units of general local government with reasonable notice of, and opportunity to comment on, any substantial change proposed to be made in the use of funds received under

section 106 [42 USCS § 5306] from one eligible activity to another or in the method of distribution of such funds.

In preparing the final statement, the grantee shall consider any such comments and views and may, if deemed appropriate by the grantee, modify the proposed statement. The final statement shall be made available to the public, and a copy shall be furnished to the Secretary together with the certifications required under subsection (b) and, where appropriate, subsection (c). Any final statement of activities may be modified or amended from time to time by the grantee in accordance with the same procedures required in this paragraph for the preparation and submission of such statement.

(3) A grant under section 106 may be made only if the grantee certifies that it is following a detailed citizen participation plan which –

(A) provides for and encourages citizen participation, with particular emphasis on participation by persons of low and moderate income who are residents of slum and blight areas and of areas in which section 106 [42 USCS § 5306] funds are proposed to be used, and in the case of a grantee described in section 106(a) [42 USCS § 5306(a)] provides for participation of residents in low and moderate income neighborhoods as defined by the local jurisdiction;

(B) provides citizens with reasonable and timely access to local meetings, information, and records relating to the grantee's proposed use of funds, as required by regulations of the Secretary, and relating to the actual use of funds under this title;

(C) provides for technical assistance to groups representative of persons of low and moderate income that request such assistance in developing proposals with the level and type of assistance to be determined by the grantee;

(D) provides for public hearings to obtain citizen views and to respond to proposals and questions at all stages of the community development program, including at least the development of needs, the review of proposed activities, and review of program performance, which hearings shall be held after adequate notice, at times and locations convenient to potential or actual beneficiaries, and with accommodation for the handicapped;

(E) provides for a timely written answer to written complaints and grievances, within 15 working days where practicable; and

(F) identifies how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate.

This paragraph may not be construed to restrict the responsibility or authority of the grantee for the development and execution of its community development program.

(b) Certification of enumerated criteria by grantee to Secretary. Any grant under section 106 [42 USCS § 5306] shall be made only if the grantee certifies to the satisfaction of the Secretary that –

(1) the grantee is in full compliance with the requirements of subsection (a)(2)(A), (B), and (C) and has made the final statement available to the public;

(2) the grant will be conducted and administered in conformity with the Civil Rights Act of 1964 and the Fair Housing Act, and the grantee will affirmatively further fair housing;

(3) the projected use of funds has been developed so as to give maximum feasible priority to activities which will benefit low- and moderate-income families or aid in the prevention or elimination of slums or blight, and the projected use of funds may also include activities which the grantee certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs, except that (A) the aggregate use of funds received under section 106 [42 USCS § 5306] and, if applicable, as a result of a guarantee or a grant under section 108, during a period specified by the grantee of not more than 3 years, shall principally benefit persons of low and moderate income in a manner that ensures that not less than 70 percent of such funds are used for activities that benefit such persons during such period; and (B) a grantee that borders on the Great Lakes and that experiences significant adverse financial and physical effects due to lakefront erosion or flooding may include in the projected use of funds activities that are clearly designed to alleviate the threat posed, and rectify the damage caused, by such erosion or flooding if such activities will principally benefit persons of low and moderate

income and the grantee certifies that such activities are necessary to meet other needs having a particular urgency;

(4) it has developed a community development plan pursuant to subsection (m), for the period specified by the grantee under paragraph (3), that identifies community development needs and specifies both short- and long-term community development objectives that have been developed in accordance with the primary objective and requirements of this title;

(5) the grantee will not attempt to recover any capital costs of public improvements assisted in whole or part under section 106 [42 USCS § 5306] or with amounts resulting from a guarantee under section 108 by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless (A) funds received under section 106 [42 USCS § 5306] are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under this title; or (B) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary that it lacks sufficient funds received under section 106 [42 USCS § 5306] to comply with the requirements of subparagraph (A); and

(6) the grantee will comply with the other provisions of this title and with other applicable laws.

(c) Housing affordability strategy requirement. A grant may be made under section 106(b) [42 USCS § 5306(b)] only if the unit of general local government certifies that it is following –

(1) a current housing affordability strategy which has been approved by the Secretary in accordance with section 105 of the Cranston-Gonzalez National Affordable Housing Act [42 USCS § 12705], or

(2) a housing assistance plan which was approved by the Secretary during the 180-day period beginning on the date of enactment of the Cranston-Gonzalez National Affordable Housing Act [enacted Nov. 28, 1990], or during such longer period as may be prescribed by the Secretary in any case for good cause.

(d) Grantee to certify it is following residential antidisplacement and relocation assistance plan.

(1) A grant under section 106 or 119 [42 USCS § 5306 or 5318] may be made only if the grantee certifies that it is following a residential antidisplacement and relocation assistance plan. A grantee receiving a grant under section 106(a) or section 119 [42 USCS §§ 5306(a) or 5318] shall so certify to the Secretary. A unit of general local government receiving amounts from a State under section 106(d) [42 USCS § 5306(d)] shall so certify to the State, and a unit of general local government receiving amounts from the Secretary under section 106(d) [42 USCS § 5306(d)] shall so certify to the Secretary.

(2) The residential antidisplacement and relocation assistance plan shall in connection with a development

project assisted under section 106 or 119 [42 USCS § 5306 or 5318] –

(A) in the event of such displacement, provide that –

(i) governmental agencies or private developers shall provide within the same community comparable replacement dwellings for the same number of occupants as could have been housed in the occupied and vacant occupiable low and moderate income dwelling units demolished or converted to a use other than for housing for low and moderate income persons, and provide that such replacement housing may include existing housing assisted with project based assistance provided under section 8 of the United States Housing Act of 1937 [42 USCS § 1437f];

(ii) such comparable replacement dwellings shall be designed to remain affordable to persons of low and moderate income for 10 years from the time of initial occupancy;

(iii) relocation benefits shall be provided for all low or moderate income persons who occupied housing demolished or converted to a use other than for low or moderate income housing, including reimbursement for actual and reasonable moving expenses, security deposits, credit checks, and other moving-related expenses, including any interim living costs; and in the case of displaced persons of low and moderate income, provide either –

(I) compensation sufficient to ensure that, for a 5-year period, the displaced families shall not

bear, after relocation, a ratio of shelter costs to income that exceeds 30 percent; or

(II) if elected by a family, a lump-sum payment equal to the capitalized value of the benefits available under subclause (I) to permit the household to secure participation in a housing cooperative or mutual housing association; and

(iv) persons displaced shall be relocated into comparable replacement housing that is –

(I) decent, safe, and sanitary;

(II) adequate in size to accommodate the occupants;

(III) functionally equivalent; and

(IV) in an area not subject to unreasonably adverse environmental conditions;

(B) provide that persons displaced shall have the right to elect, as an alternative to the benefits under this subsection, to receive benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.) if such persons determine that it is in their best interest to do so; and

(C) provide that where a claim for assistance under subparagraph (A)(iv) is denied by a grantee, the claimant may appeal to the Secretary in the case of a grant under section 106 or 119 [42 USCS § 5306 or 5318] or to the appropriate State official in the case of a grant under section 106(d) [42 USCS § 5306(d)], and that the decision of the Secretary or the State official shall be final

unless a court determines the decision was arbitrary and capricious.

(3) Paragraphs (2)(A)(i) and (2)(A)(ii) shall not apply in any case in which the Secretary finds, on the basis of objective data, that there is available in the area an adequate supply of habitable affordable housing for low and moderate income persons. A determination under this paragraph is final and nonreviewable.

TITLE 42. THE PUBLIC HEALTH AND WELFARE

CHAPTER 69. COMMUNITY DEVELOPMENT

42 USCS § 5305 (2001)

§ 5305. Activities eligible for assistance

(a) Enumeration of eligible activities. Activities assisted under this title may include only –

(1) the acquisition of real property (including air rights, water rights, and other interests therein) which is (A) blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth; (B) appropriate for rehabilitation or conservation activities; (C) appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open spaces, natural resources, and scenic areas, the provision of recreational opportunities, or the guidance of urban development; (D) to be used for the provision of public works, facilities, and improvements eligible for assistance

under this title; or (E) to be used for other public purposes;

(2) the acquisition, construction, reconstruction, or installation (including design features and improvements with respect to such construction, reconstruction, or installation that promote energy efficiency) of public works, facilities (except for buildings for the general conduct of government), and site or other improvements;

(3) code enforcement in deteriorated or deteriorating areas in which such enforcement, together with public or private improvements or services to be provided, may be expected to arrest the decline of the area;

(4) clearance, demolition, removal, reconstruction, and rehabilitation (including rehabilitation which promotes energy efficiency) of buildings and improvements (including interim assistance, and financing public or private acquisition for reconstruction or rehabilitation, and reconstruction or rehabilitation, of privately owned properties, and including the renovation of closed school buildings);

(5) special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly and handicapped persons;

(6) payments to housing owners for losses of rental income incurred in holding for temporary periods housing units to be utilized for the relocation of individuals and families displaced by activities under this title;

(7) disposition (through sale, lease, donation, or otherwise) of any real property acquired pursuant to this title or its retention for public purposes;

(8) provision of public services, including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, energy conservation, welfare or recreation needs, if such services have not been provided by the unit of general local government (through funds raised by such unit, or received by such unit from the State in which it is located) during any part of the twelve-month period immediately preceding the date of submission of the statement with respect to which funds are to be made available under this title, and which are to be used for such services, unless the Secretary finds that the discontinuation of such services was the result of events not within the control of the unit of general local government, except that not more than 15 per centum of the amount of any assistance to a unit of general local government (or in the case of nonentitled communities not more than 15 per centum statewide) under this title including program income may be used for activities under this paragraph unless such unit of general local government used more than 15 percent of the assistance received under this title for fiscal year 1982 or fiscal year 1983 for such activities (excluding any assistance received pursuant to Public Law 98-8), in which case such unit of general local government may use not more than the percentage or amount of such assistance used for such activities for such fiscal year, whichever method of calculation yields the higher amount, except that of any amount of assistance under this title (including program income) in each of fiscal years 1993 through 2001 to the City of Los Angeles and County of Los Angeles, each such unit of general government may use not more than

25 percent in each such fiscal year for activities under this paragraph, and except that of any amount of assistance under this title (including program income) in each of fiscal years 1999, 2000, and 2001, to the City of Miami, such city may use not more than 25 percent in each fiscal year for activities under this paragraph;

(9) payment of the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of activities assisted under this title;

(10) payment of the cost of completing a project funded under title I of the Housing Act of 1949;

(11) relocation payments and assistance for displaced individuals, families, businesses, organizations, and farm operations, when determined by the grantee to be appropriate;

(12) activities necessary (A) to develop a comprehensive community development plan, and (B) to develop a policy-planning-management capacity so that the recipient of assistance under this title may more rationally and effectively (i) determine its needs, (ii) set long-term goals and short-term objectives, (iii) devise programs and activities to meet these goals and objectives, (iv) evaluate the progress of such programs in accomplishing these goals and objectives, and (v) carry out management, coordination, and monitoring of activities necessary for effective planning implementation;

(13) payment of reasonable administrative costs related to establishing and administering federally approved enterprise zones and payment of reasonable administrative costs and carrying charges related to (A)

administering the HOME program under title II of the Cranston-Gonzalez National Affordable Housing Act; and (B) the planning and execution of community development and housing activities, including the provision of information and resources to residents of areas in which community development and housing activities are to be concentrated with respect to the planning and execution of such activities, and including the carrying out of activities as described in section 701(e) of the Housing Act of 1954 on the date prior to the date of enactment of the Housing and Community Development Amendments of 1981 [enacted Aug. 13, 1981];

(14) provision of assistance including loans (both interim and long-term) and grants for activities which are carried out by public or private nonprofit entities, including (A) acquisition of real property: (B) acquisition, construction, reconstruction, rehabilitation, or installation of (i) public facilities (except for buildings for the general conduct of government), site improvements, and utilities, and (ii) commercial or industrial buildings or structures and other commercial or industrial real property improvements; and (C) planning;

(15) assistance to neighborhood-based nonprofit organizations, local development corporations, nonprofit organizations serving the development needs of the communities in nonentitlement areas, or entities organized under section 301(d) of the Small Business Investment Act of 1958 [15 USCS § 681(d)] to carry out a neighborhood revitalization or community economic development or energy conservation project in furtherance of the objectives of section 101(c) [42 USCS § 5301(c)], and assistance to neighborhood-based nonprofit organizations, or other

private or public nonprofit organizations, for the purpose of assisting, as part of neighborhood revitalization or other community development, the development of shared housing opportunities (other than by construction of new facilities) in which elderly families (as defined in section 3(b)(3) of the United States Housing Act of 1937 [42 USCS § 1437a (b)(3)]) benefit as a result of living in a dwelling in which the facilities are shared with others in a manner that effectively and efficiently meets the housing needs of the residents and thereby reduces their cost of housing;

(16) activities necessary to the development of energy use strategies related to a recipient's development goals, to assure that those goals are achieved with maximum energy efficiency, including items such as –

(A) an analysis of the manner in, and the extent to, which energy conservation objectives will be integrated into local government operations, purchasing and service delivery, capital improvements budgeting, waste management, district heating and cooling, land use planning and zoning, and traffic control, parking, and public transportation functions; and

(B) a statement of the actions the recipient will take to foster energy conservation and the use of renewable energy resources in the private sector, including the enactment and enforcement of local codes and ordinances to encourage or mandate energy conservation or use of renewable energy resources, financial and other assistance to be provided (principally for the benefit of low-

and moderate-income persons) to make energy conserving improvements to residential structures, and any other proposed energy conservation activities;

(17) provision of assistance to private, for-profit entities, when the assistance is appropriate to carry out an economic development project (that shall minimize, to the extent practicable, displacement of existing businesses and jobs in neighborhoods) that –

(A) creates or retains jobs for low- and moderate-income persons;

(B) prevents or eliminates slums and blight;

(C) meets urgent needs;

(D) creates or retains businesses owned by community residents;

(E) assists businesses that provide goods or services needed by, and affordable to, low- and moderate-income residents; or

(F) provides technical assistance to promote any of the activities under subparagraphs (A) through (E);

(18) the rehabilitation or development of housing assisted under section 17 of the United States Housing Act of 1937 [42 USCS § 1437o];

(19) provision of technical assistance to public or nonprofit entities to increase the capacity of such entities to carry out eligible neighborhood revitalization or economic development activities, which assistance shall not be considered a planning cost as defined in paragraph (12) or administrative cost as defined in paragraph (13);

(20) housing services, such as housing counseling in connection with tenant-based rental assistance and affordable housing projects assisted under title II of the Cranston-Gonzalez National Affordable Housing Act, energy auditing, preparation of work specifications, loan processing, inspections, tenant selection, management of tenant-based rental assistance, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in housing activities assisted under title II of the Cranston-Gonzalez National Affordable Housing Act;

(21) provision of assistance by recipients under this title to institutions of higher education having a demonstrated capacity to carry out eligible activities under this subsection for carrying out such activities;

(22) provision of assistance to public and private organizations, agencies, and other entities (including nonprofit and for-profit entities) to enable such entities to facilitate economic development by –

(A) providing credit (including providing direct loans and loan guarantees, establishing revolving loan funds, and facilitating peer lending programs) for the establishment, stabilization, and expansion of microenterprises;

(B) providing technical assistance, advice, and business support services (including assistance, advice, and support relating to developing business plans, securing funding, conducting marketing, and otherwise engaging in microenterprise activities) to owners of microenterprises and persons developing microenterprises; and

(C) providing general support (such as peer support programs and counseling) to owners of microenterprises and persons developing microenterprises;

(23) activities necessary to make essential repairs and to pay operating expenses necessary to maintain the habitability of housing units acquired through tax foreclosure proceedings in order to prevent abandonment and deterioration of such housing in primarily low- and moderate-income neighborhoods;

(24) provision of direct assistance to facilitate and expand homeownership among persons of low and moderate income (except that such assistance shall not be considered a public service for purposes of paragraph (8)) by using such assistance to –

(A) subsidize interest rates and mortgage principal amounts for low- and moderate-income homebuyers;

(B) finance the acquisition by low- and moderate-income homebuyers of housing that is occupied by the homebuyers;

(C) acquire guarantees for mortgage financing obtained by low- and moderate-income homebuyers from private lenders (except that amounts received under this title may not be used under this subparagraph to directly guarantee such mortgage financing and grantees under this title may not directly provide such guarantees);

(D) provide up to 50 percent of any downpayment required from low- or moderate-income homebuyer; or

(E) pay reasonable closing costs (normally associated with the purchase of a home) incurred by a low- or moderate-income homebuyer; and

(25) lead-based paint hazard evaluation and reduction, as defined in section 1004 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 [42 USCS § 4851b].

(b) Reimbursement of Secretary for administrative services connected with rehabilitation of properties. Upon the request of the recipient of assistance under this title, the Secretary may agree to perform administrative services on a reimbursable basis on behalf of such recipient in connection with loans or grants for the rehabilitation of properties as authorized under subsection (a)(4).

(c) Activities benefiting persons of low and moderate income.

(1) In any case in which an assisted activity described in paragraph (14) or (17) of subsection (a) is identified as principally benefiting persons of low and moderate income, such activity shall –

(A) be carried out in a neighborhood consisting predominately of persons of low and moderate income and provide services for such persons; or

(B) involve facilities designed for use predominately by persons of low and moderate income; or

(C) involve employment of persons, a majority of whom are persons of low and moderate income.

(2)(A) In any case in which an assisted activity described in subsection (a) is designed to serve an area

generally and is clearly designed to meet identified needs of persons of low and moderate income in such area, such activity shall be considered to principally benefit persons of low and moderate income if (i) not less than 51 percent of the residents of such area are persons of low and moderate income; (ii) in any metropolitan city or urban county, the area served by such activity is within the highest quartile of all areas within the jurisdiction of such city or county in terms of the degree of concentration of persons of low and moderate income; or (iii) the assistance for such activity is limited to paying assessments (including any charge made as a condition of obtaining access) levied against properties owned and occupied by persons of low and moderate income to recover the capital cost for a public improvement. (ii) in any metropolitan city or urban county, the area served by such activity is within the highest quartile of all areas within the jurisdiction of such city or county in terms of the degree of concentration of persons of low and moderate income;

(B) The requirements of subparagraph (A) do not prevent the use of assistance under this title for the development, establishment, and operation for not to exceed 2 years after its establishment of a uniform emergency telephone number system if the Secretary determines that –

(i) such system will contribute substantially to the safety of the residents of the area served by such system;

(ii) not less than 51 percent of the use of the system will be by persons of low and moderate income; and

(iii) other Federal funds received by the grantee are not available for the development, establishment, and operation of such system due to the insufficiency of the amount of such funds, the restrictions on the use of such funds, or the prior commitment of such funds for other purposes by the grantee.

The percentage of the cost of the development, establishment, and operation of such a system that may be paid from assistance under this title and that is considered to benefit low and moderate income persons is the percentage of the population to be served that is made up of persons of low and moderate income.

(3) Any assisted activity under this title that involves the acquisition or rehabilitation of property to provide housing shall be considered to benefit persons of low and moderate income only to the extent such housing will, upon completion, be occupied by such persons.

(4) For the purposes of subsection (c)(1)(C) –

(A) if an employee resides in, or the assisted activity through which he or she is employed, is located in a census tract that meets the Federal enterprise zone eligibility criteria, the employee shall be presumed to be a person of low- or moderate-income; or

(B) if an employee resides in a census tract where not less than 70 percent of the residents have incomes at or below 80 percent of the area median, the employee shall be presumed to be a person of low or moderate income.

(d) Training program. The Secretary shall implement, using funds recaptured pursuant to section 119(o) [42

USCS § 5318(o)], an on-going education and training program for officers and employees of the Department, especially officers and employees of area and other field offices of the Department, who are responsible for monitoring and administering activities pursuant to paragraphs (14), (15), and (17) of subsection (a) for the purpose of ensuring that (A) such personnel possess a thorough understanding of such activities; and (B) regulations and guidelines are implemented in a consistent fashion.

(e) Guidelines for evaluating and selecting economic development projects.

(1) Establishment. The Secretary shall establish, by regulation, guidelines to assist grant recipients under this title to evaluate and select activities described in section 105(a)(14), (15), and (17) [subsec. (a)(14), (15), and (17) of this section] for assistance with grant amounts. The Secretary shall not base a determination of eligibility of the use of funds under this title for such assistance solely on the basis that the recipient fails to achieve one or more of the guidelines' objectives as stated in paragraph (2).

(2) Project costs and financial requirements. The guidelines established under this subsection shall include the following objectives:

(A) The project costs of such activities are reasonable.

(B) To the extent practicable, reasonable financial support has been committed for such activities from non-Federal sources prior to disbursement of Federal funds.

(C) To the extent practicable, any grant amounts to be provided for such activities do not substantially reduce the amount of non-Federal financial support for the activity.

(D) Such activities are financially feasible.

(E) To the extent practicable, such activities provide not more than a reasonable return on investment to the owner.

(F) To the extent practicable, grant amounts used for the costs of such activities are disbursed on a pro rata basis with amounts from other sources.

(3) Public benefit. The guidelines established under this subsection shall provide that the public benefit provided by the activity is appropriate relative to the amount of assistance provided with grant amounts under this title.

(f) Assistance to for-profit entities. In any case in which an activity described in paragraph (17) of subsection (a) is provided assistance such assistance shall not be limited to activities for which no other forms of assistance are available or could not be accomplished but for that assistance.

(g) Microenterprise and small business program requirements. In developing program requirements and providing assistance pursuant to paragraph (17) of subsection (a) to a microenterprise or small business, the Secretary shall –

(1) take into account the special needs and limitations arising from the size of the entity; and

(2) not consider training, technical assistance, or other support services costs provided to small businesses or microenterprises or to grantees and subgrantees to develop the capacity to provide such assistance, as a planning cost pursuant to section 105(a)(12) [subsec. (a)(12) of this section] or an administrative cost pursuant to section 105(a)(13) [subsec. (a)(13) of this section].

(h) Prohibition on use of assistance for employment relocation activities. Notwithstanding any other provision of law, no amount from a grant under section 106 [42 USCS § 5306] made in fiscal year 1999 or any succeeding fiscal year may be used to assist directly in the relocation of any industrial or commercial plant, facility, or operation, from 1 area to another area, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs.

TITLE 42. PUBLIC HEALTH AND WELFARE

CHAPTER 69. COMMUNITY DEVELOPMENT

42 USCS § 5309 (2001)

§ 5309. Nondiscrimination in programs and activities

(a) Prohibited conduct. No person in the United States shall on the ground of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Any prohibition

against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 USCS §§ 6101 et seq.] or with respect to an otherwise qualified handicapped individual as provided in section 504 of the Rehabilitation Act of 1973 [29 USCS § 794] shall also apply to any such program or activity.

(b) Compliance procedures available to Secretary. Whenever the Secretary determines that a State or unit of general local government which is a recipient of assistance under this title has failed to comply with subsection (a) or an applicable regulation, he shall notify the Governor of such State or the chief executive officer of such unit of local government of the noncompliance and shall request the Governor or the chief executive officer to secure compliance. If within a reasonable period of time, not to exceed sixty days, the Governor or the chief executive officer fails or refuses to secure compliance, the Secretary is authorized to (1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; (2) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) [42 USCS §§ 2000d et seq.]; (3) exercise the powers and functions provided for in section 111(a) of this Act [42 USCS § 5311(a)]; or (4) take such other action as may be provided by law.

(c) Civil action by Attorney General. When a matter is referred to the Attorney General pursuant to subsection (b), or whenever he has reason to believe that a State government or unit of general local government is engaged in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in any appropriate United States district court

for such relief as may be appropriate, including injunctive relief.

(d) The provisions of this section and section 104(b)(2) [42 USCS § 5304(b)(2)] which relate to discrimination on the basis of race shall not apply to the provision of assistance by grantees under this title to the Hawaiian Home Lands.

TITLE 42. THE PUBLIC HEALTH AND WELFARE

CHAPTER 130. NATIONAL AFFORDABLE HOUSING

INVESTMENT IN AFFORDABLE HOUSING

HOME INVESTMENT PARTNERSHIPS

42 USCS § 12742 (2001)

§ 12742. Eligible uses of investment

(a) Housing uses.

(1) In general. Funds made available under this subtitle may be used by participating jurisdictions to provide incentives to develop and support affordable rental housing and homeownership affordability through the acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing, including real property acquisition, site improvement, conversion, demolition, and other expenses, including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations, to provide for the payment of reasonable administrative and planning costs, to

provide for the payment of operating expenses of community housing development organizations, and to provide tenant-based rental assistance. For the purpose of this subtitle, the term "affordable housing" includes permanent housing for disabled homeless persons, transitional housing, and single room occupancy housing.

[Code of Federal Regulations]
[Title 24, Volume 1]
[Revised as of April 1, 2001]
From the U.S. Government Printing Office
via GPO Access
[CITE: 24CFR42.375]

[Page 344-346]

TITLE 24 - HOUSING AND URBAN DEVELOPMENT

PART 42 - DISPLACEMENT, RELOCATION ASSISTANCE, AND REAL PROPERTY ACQUISITION FOR HUD AND HUD-ASSISTED PROGRAMS - Table of Contents

Subpart C - Requirements Under Section 104(d) of Housing and Community Development Act of 1974

Sec. 42.375 One-for-one replacement of lower-income dwelling units.

(a) Units that must be replaced. All occupied and vacant occupiable lower-income dwelling units that are demolished or converted to a use other than as lower-income dwelling units in connection with an assisted activity must be replaced with comparable lower-income dwelling units.

(b) Acceptable replacement units. Replacement lower-income dwelling units may be provided by any government agency or private developer and must meet the following requirements:

(1) The units must be located within the recipient's jurisdiction. To the extent feasible and consistent with other statutory priorities, the units shall be located within the same neighborhood as the units replaced.

(2) The units must be sufficient in number and size to house no fewer than the number of occupants who could have been housed in the units that are demolished or converted. The number of occupants who could have been housed in units shall be determined in accordance with applicable local housing occupancy codes. The recipient may not replace those units with smaller units (e.g., a 2-bedroom unit with two 1-bedroom units), unless the recipient has provided the information required under paragraph (c)(7) of this section.

[[Page 345]]

(3) The units must be provided in standard condition. Replacement lower-income dwelling units may include units that have been raised to standard from substandard condition if:

(i) No person was displaced from the unit (see definition of "displaced person" in Sec. 42.305); and

(ii) The unit was vacant for at least 3 months before execution of the agreement between the recipient and the property owner.

(4) The units must initially be made available for occupancy at any time during the period beginning 1 year before the recipient makes public the information required under paragraph (d) of this section and ending 3 years after the commencement of the demolition or rehabilitation related to the conversion.

(5) The units must be designed to remain lower-income dwelling units for at least 10 years from the date of initial occupancy. Replacement lower-income dwelling units may include, but are not limited to, public housing

or existing housing receiving Section 8 project-based assistance.

(c) Preliminary information to be made public. Before the recipient enters into a contract committing it to provide funds under programs covered by this subpart for any activity that will directly result in the demolition of lower-income dwelling units or the conversion of lower-income dwelling units to another use, the recipient must make public, and submit in writing to the HUD field office (or State, in the case of a unit of general local government funded by the State), the following information:

(1) A description of the proposed assisted activity;

(2) The location on a map and number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than for lower-income dwelling units as a direct result of the assisted activity;

(3) A time schedule for the commencement and completion of the demolition or conversions;

(4) The location on a map and the number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units. If such data are not available at the time of the general submission, the submission shall identify the general location on an area map and the approximate number of dwelling units by size, and information identifying the specific location and number of dwelling units by size shall be submitted and disclosed to the public as soon as it is available;

(5) The source of funding and a time schedule for the provision of replacement dwelling units;

(6) The basis for concluding that each replacement dwelling unit will remain a lower-income dwelling unit for at least 10 years from the date of initial occupancy; and

(7) Information demonstrating that any proposed replacement of dwelling units with smaller dwelling units (e.g., a 2-bedroom unit with two 1-bedroom units) is consistent with the needs assessment contained in its HUD-approved consolidated plan. A unit of general local government funded by the State that is not required to submit a consolidated plan to HUD must make public information demonstrating that the proposed replacement is consistent with the housing needs of lower-income households in the jurisdiction.

(d) Replacement not required. (1) In accordance with 42 U.S.C. 5304(d)(3), the one-for-one replacement requirement of this section does not apply to the extent the HUD field office determines, based upon objective data, that there is an adequate supply of vacant lower-income dwelling units in standard condition available on a nondiscriminatory basis within the area.

(2) The recipient must submit directly to the HUD field office the request for determination that the one-for-one replacement requirement does not apply. Simultaneously with the submission of the request, the recipient must make the submission public and inform interested persons that they have 30 days from the date of submission to provide to HUD additional information supporting or opposing the request.

(3) A unit of general local government funded by the State must submit the request for determination under

[[Page 346]]

this paragraph to the State. Simultaneously with the submission of the request, the unit of general local government must make the submission public and inform interested persons that they have 30 days from the date of submission to provide to the State additional information supporting or opposing the request. If the State, after considering the submission and the additional data, agrees with the request, the State must provide its recommendation with supporting information to the field office.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IRMA JEAN JAMES, and TERRI LARY, plaintiffs	*	CIVIL ACTION NO. 3-98-CV-0436-R (M-KAP) CLASS ACTION (Filed Sept. 25, 2000)
v.	*	
THE CITY OF DALLAS, et al., defendants.	*	

THIRD AMENDED COMPLAINT

Introduction

Plaintiffs seek relief for themselves and others similarly situated for the injuries caused by the City's demolition of repairable single family houses in violation of the U.S. Constitution and laws. Plaintiffs seek relief against HUD because it knowingly participated in the City's racially discriminatory pattern and practice by proposing and condoning the use of racial stereotypes in the City's neighborhood classification schemes and providing federal funding for the demolitions and for the code enforcement program and related activities that caused the demolitions in the racially classified areas.

Jurisdiction

1. This Court has jurisdiction in this case pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343, and 42 U.S.C. § 3613.

Parties

2. Plaintiff Irma Jean James is the owner of real property located in the City of Dallas at 2404 Alabama Ave., Dallas, TX, 75216. The property is located in a predominantly African-American neighborhood and census tract. Ms. James is African-American. Her single family home was demolished by the City without notice or an opportunity for a hearing on the proposed demolition. The City demolished her home and seized its contents without obtaining either a warrant or other judicial order authorizing the seizure. The City has assessed Ms. James the costs of the demolition and placed a lien on the property for the demolition costs, fees, and accruing interest.

3. Plaintiff Terri Lary is an owner of real property located at 3902 Coolidge Street, Dallas, TX, 75215. The property is located in a predominantly African-American neighborhood and census tract. Ms. Lary is African-American. Ms Lary's single family home was demolished by the City without notice or an opportunity for a hearing on the proposed demolition. The City demolished her home and seized its contents without obtaining either a warrant or other judicial order authorizing the seizure. The City has assessed Ms. Lary the costs of the demolition and placed a lien on the property for the demolition costs, fees, and accruing interest.

4. Defendant, the City of Dallas [City], is a municipal government organized and operating under the laws of the State of Texas.

5. Defendant, United States Department of Housing and Urban Development [HUD], is an executive agency of the United States of America.

HUD and City racial discrimination

6. The City of Dallas is and has engaged in a pattern and practice of racially discriminatory demolitions of single family homes by disproportionately imposing and enforcing demolition orders against homes in African-American neighborhoods. The demolition orders are a sanction imposed by the City's Urban Rehabilitation Standards Board [URSB] under the City's Minimum Urban Standards ordinance. The pattern and practice of discriminatory demolitions has resulted in making housing unavailable because of race.

7. The current and past patterns of racially discriminatory demolitions of repairable single family homes by the City of Dallas are directly traceable to overtly race conscious, racially discriminatory, and racially biased HUD and City housing and community development planning processes. HUD proposed and the City accepted and used a racial stereotype that African-American occupied housing and neighborhoods were inferior to white occupied housing and neighborhoods. This overt racial bias is at least one causal factor in the persistent pattern of the City's unequal imposition of the legal sanction of demolition upon single family homes in African-American neighborhoods.

8. The City and HUD have subjected plaintiffs and the race discrimination class members to purposeful racial discrimination in the implementation of the City's

code enforcement demolition policies and practices. HUD has financed the code enforcement demolition process despite the racial purpose and discriminatory effects of the demolitions. The City has implemented the demolition process. The implementation of the City's code enforcement demolition policies and practices has resulted in disproportionate number of single family unit demolitions in predominantly African-American neighborhoods and in the disproportionate demolition of repairable units in African-American neighborhoods.

9. The disproportionate demolition of repairable single family units in the predominantly African-American neighborhoods has perpetuated racial segregation of those neighborhoods and of the City. The disproportionate demolition without the provision of replacement units diminishes the number of units available of for persons of any race to occupy. The disproportionate demolition without the provision of replacement units reduces the marketability of the remaining units in the neighborhoods, is a condition equated with slums and urban blight and discourages private and public investment. This causes a reduction in the property values of all the property in the African-American neighborhoods including the neighborhoods in which the names plaintiffs' property is located.

10. The City of Dallas code enforcement demolition program is a program or activity funded by federal funds provided by HUD.

11. HUD has not brought about an end to the discriminatory behavior or eliminated the federal funding

for the discrimination. HUD has or should have knowledge of the discrimination through its monitoring of the federal funding.

Due process and unreasonable seizures

12. The city, acting pursuant to the orders of the URSB, has seized plaintiffs and the due process/warrant class members single family homes by entering onto the owners property, demolishing the structure, and disposing of the resulting debris and any personal property on the premises. The City has subsequently assessed the costs of the demolition against the property owners and imposed a lien for the costs on the property. The City's actions have been taken without providing plaintiffs and the members of the due process/warrant class with notice of the proposed action or the opportunity for a fair hearing on the issues of whether the house should be demolished and the amount, assessment, and imposition of the lien for the demolition related costs.

13. The City has seized plaintiffs and the due process class members single family homes without obtaining a warrant or other judicial order.

14. The URSB is a policy making board of the City. The orders issued by the URSB are official City decisions.

Class Action Allegations

Rule 23(b)(2) class action against City of Dallas for failure to provide notice and for demolition without a warrant.

15. Plaintiffs seek to represent a Rule 23(b)(2) class of property owners who had a repairable single family

structure demolished by order of the City of Dallas Urban Rehabilitation Standards Board:

1) and the City demolished the structure without providing the property owner notice of the opportunity to contest the proposed demolition at a hearing before the issuance of the order causing the demolition,

2) and whose structure was demolished without a warrant.

16. This notice and warrant class includes those owners whose structures were demolished following a default demolition order.

17. There are more than 100 owners of property with repairable single family houses who had their houses demolished by the City without notice of either the URSB hearing or of the URSB order and without a warrant.

18. Plaintiffs' claims for violation of the due process notice requirement and the Fourth Amendment unreasonable seizure requirement do not differ in relevant details from the class members same claims. Plaintiffs and the class members did not receive notice of the proceedings at which the City decided to issue the demolition order. The City did not obtain a warrant before it seized plaintiffs' and class members' property.

19. Plaintiffs seek the same relief for the class as they seek for themselves.

20. Plaintiffs and the Rule 23(b)(2) class seek injunctive relief against the City of Dallas as set out in the prayer for relief.

21. The City has acted on grounds generally applicable to the class. The specific grounds are failing to give them notice of the hearing or of the demolition order and demolishing their property without a warrant. Final injunctive relief is appropriate.

22. Competent counsel represents plaintiffs and the class. Plaintiffs will adequately represent the interests of the class.

Rule 23(b)(2) class action against the City of Dallas and HUD for race discrimination claims.

23. Plaintiffs Irma James and Terri Lary seek to represent a Rule 23(b)(2) class of property owners as defined below against HUD and the City of Dallas for injunctive relief for violations of plaintiffs constitutional and statutory rights to be free from racial discrimination.

24. The definition of the Rule 23(b)(2) class that plaintiffs seek to represent is comprised of all persons who share the following characteristics:

1) owners of at least one parcel of real property on which a single family structure was placed,

2) and which single family structure was a repairable single family structure that was demolished pursuant to a City URSB order,

3) and either the owner is African-American or the repairable single family unit demolished pursuant to the City URSB order was located in a predominantly black census tract that was 50% or more non-Hispanic black according to the 1990 U.S. Census.

25. There are more than 100 members of the class. From 1992 through 1996, the City of Dallas demolished at least 900 single-family houses in census tracts with 50% or more black occupied housing units following URSB orders. At least 100 of these units were repairable.

26. Plaintiffs and the Rule 23(b)(2) class seek the injunctive relief against HUD and the City of Dallas set out in the prayer for relief.

27. The City and HUD have acted on grounds generally applicable to the class by demolishing class members' houses because of race, thus making injunctive relief appropriate.

28. Plaintiffs are members of the class and their claims are typical of the class claims.

29. Competent counsel represents plaintiffs and the class. Plaintiffs will adequately represent the interests of the class.

Definition of "repairable"

30. The term "repairable" in the definition of the classes means a single-family house that meets at least one of the following criteria:

a) the estimated or actual costs of repairs was equal to or less than the property tax assessed value of the structure or equal to or less than actual market value,

b) there is no certification in the URSB file that the structure is non-repairable,

c) the City code enforcement URSB referral recommends that the URSB order repairs,

d) the URSB staff recommendation to the URSB is that the URSB order repairs, or

e) the URSB ordered repairs to the structure.

Claims for relief

due process/warrant claims

31. The City's actions seizing the plaintiffs' and class members' property, assessing the costs of the demolition, and imposing a lien on the property without providing prior notice and an opportunity for a fair hearing violates the due provision of the Fourteenth Amendment to the U.S. Constitution. 42 U.S.C. § 1983 provides a cause of action for this claim.

32. The City's actions seizing plaintiffs' and class members' property without a warrant is an unreasonable seizure and is in violation of the Fourth Amendment to the U.S. Constitution as applied to the City by the Fourteenth Amendment to the U.S. Constitution. 42 U.S.C. § 1983 provides a cause of action for this claim.

race discrimination claims

33. The City's actions violate 42 U.S.C. §§ 1981, 2000d, 3604(a), 5301(b)(2), and 5309.

34. HUD's actions violate 42 U.S.C. §§ 1981, 2000d, 3604(a), 3608(e)(5), and the Fifth Amendment to the United States Constitution. The Administrative Procedure Act, 5 U.S.C. § 702, provides a cause of action and waives HUD's sovereign immunity for injunctive relief to remedy these violations.

Prayer for relief

Plaintiffs request the following relief on behalf of themselves and the class members.

A permanent injunction enjoining the City of Dallas to:

a) cancel the debt consisting of the costs assessed for the demolition, all filing fees or other expenses connected with the assessment of costs, and any interest accruing on the costs for each class member and file notice in the public deed record that the debt is canceled,

b) file a release of lien in the public deed records for the debt,

c) ensure that the notice of debt cancellation and the release of the lien are filed in a manner that will remove any cloud on the title of the property and any adverse credit rating on the personal credit of the class members,

d) ensure that all City records concerning the property show that the debt is canceled and the lien released,

e) refrain from taking any steps to enforce the lien, collect the debt, or use the lien or the debt to in any way prejudice the personal or property rights of each class member,

f) return all money paid, with interest, paid by class members to the City for the demolition related costs and any costs incurred as a result of the imposition of the liens for demolition and demolition related costs,

g) set aside all foreclosures based on, in whole, or in part, a demolition lien against property owned by a class member,

h) refrain from foreclosures based on, in whole, or in part, a demolition lien against property owned by a class member,

i) refrain from any action to enforce or collect its claims for demolition costs such as refusing to issue building permits,

j) cease demolition of repairable structures in African-American areas or that are owned by African-Americans, and

k) cease demolition of repairable structures without adequate notice that satisfies due process.

A permanent injunction enjoining the City and HUD, acting individually or jointly, to provide each class member with clear title to a comparable replacement single family housing unit or enter equivalent injunctive relief. A comparable replacement single family housing unit is one that meets the standards set by HUD for replacement housing under the Community Development Block Grant program. 24 C.F.R. § 42.305 adopting definitions under 49 C.F.R. § 24.2.

A permanent injunction requiring HUD to administer all of its housing and community development related programs and activities to eradicate the effects of HUD's discrimination on the housing and neighborhood conditions in the predominantly black census tracts to the extent practical. The effects to be eradicated include the loss of housing units caused by the HUD funded housing code enforcement and housing code enforcement related demolitions of repairable single family units as well as

the resulting blight caused by the loss of housing and households from those areas.

A permanent injunction against the City and HUD prohibiting their use of overt racial stereotypes in the classification of neighborhoods for purposes of conducting housing and community development related activities, including housing demolition activities, within the City of Dallas.

A permanent injunction against the City's and HUD's continuation of policies and practices traceable to their use of overt racial stereotypes in its neighborhood classification schemes that continue to have discriminatory effects on the conditions in predominantly black census tracts.

A permanent injunction requiring the City and HUD to implement a Court approved plan to eliminate the effects of the City's and HUD's discrimination to the extent practical by restoring the class member victims of their discriminatory conduct to the position the class members would have occupied in the absence of such conduct.

A permanent injunction prohibiting continued HUD funding for City of Dallas housing code enforcement and other housing demolition related activities in predominantly black census tracts until the City and HUD have obtained Court approval for a plan that will eliminate the effects of the City's and HUD's discrimination to the extent practical.

A permanent injunction requiring HUD to establish, maintain, and use a monitoring system that will allow

HUD to determine if the City is discriminating because of race or color in its implementation of HUD funded code enforcement or other housing and community development demolition related activities.

The entry of any other relief against HUD and the City that is appropriate.

The entry of an order requiring the City and HUD to pay litigation expenses, court costs, and attorneys fees.

Alternative Relief

Plaintiffs seek the alternative relief of damages only if the injunctive relief requested above is unavailable. If the injunctive relief is not provided, then plaintiffs seek the certification of the due process/warrant class and the race discrimination class as Fed. R. Civ. P. 23(b)(3) classes and request damages for themselves and the class members. This alternative relief is sought only against the City of Dallas and is not asserted against HUD.

Respectfully Submitted,

MICHAEL M. DANIEL, P.C.
3301 Elm Street
Dallas, Texas 75226-1637
214-939-9230
214-939-9229 fax

By: /s/ Michael M. Daniel
Michael M. Daniel
State Bar No. 05360500
Laura B. Beshara
State Bar No. 02261750

Attorneys for Plaintiffs

Certificate of Service

I certify that a true and correct copy of the above document was served upon counsel for all defendants by being placed in the U.S. mail, first class postage prepaid, and upon counsel for HUD by Federal Express delivery on the 30th day of August, 2000.

/s/ Michael M. Daniel
Michael M. Daniel
Laura B. Beshara